

No.

6237

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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FALON E. KIRK,

Claimant and Appellant,

vs.

UNITED STATES OF AMERICA,

Libelant and Appellee,

AMERICAN GAS SCREW V-293, her motors, tackle,  
apparel, furniture, etc., and ERIC HOGSTROM,

Respondents.

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Transcript of Record.

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Upon Appeal from the United States District Court for the Southern  
District of California, Central Division.

FILED

OCT 31 1932

PAUL P. O'BRIEN,  
CLERK



No.

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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Claimant and Appellant,

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UNITED STATES OF AMERICA,

Libelant and Appellee,

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Upon Appeal from the United States District Court for the Southern  
District of California, Central Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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## Names and Addresses of Proctors.

For Claimant and Appellant F. E. Kirk:

H. WM. HESS, Esq.,  
Civic Center Building,  
Los Angeles, California.

STANLEY M. DOYLE, Esq.,  
Glendive, Dawson County, Montana.

For Libelant and Appellee:

SAMUEL W. McNABB, Esq.,  
United States Attorney;

FRANK M. CHICHESTER, Esq.,  
Assistant United States Attorney;

LOUIS J. SOMERS, Esq.,  
Assistant United States Attorney,  
Federal Building,  
Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

|   |   |                      |
|---|---|----------------------|
| UNITED STATES OF AMERICA,   | ) |                      |
|   | ) |                      |
|   | ) |                      |
|   | ) | No. 5406-H           |
| Libelant,   | ) |                      |
| vs.   | ) |                      |
|   | ) |                      |
|   | ) |                      |
| AMERICAN GAS SCREW V-293, her motors, tackle, apparel, furniture, etc., | ) | LIBEL OF INFORMATION |
|   | ) |                      |
|   | ) |                      |
| Respondent.   | ) |                      |
|   | ) |                      |

TO THE HONORABLE JUDGES OF THE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The United States of America, by Samuel W. McNabb, United States Attorney for the Southern District of California, and Frank M. Chichester, Assistant United States Attorney for said District, brings suit herein in a cause of forfeiture civil and maritime against the American Gas Screw V-293, her motors, tackle, apparel, furniture, etc., and against all persons intervening for their interest therein, and alleges as follows:

I.

That the Respondent, American Gas Screw V-293, was seized by the United States Coast Guard, Section Base No. 17, while standing to sea from San Pedro Harbor in the vicinity of Point Firmin on March 3, 1932, for violation of the laws of the United States, and that said vessel on the date of the filing of this Libel is in the custody of the United States Coast Guard, Section Base No.

17, in the Harbor of Los Angeles, California, and within the jurisdiction of this Honorable Court;

That the said seizure has been adopted by the Collector of Customs for the Port of Los Angeles, California, District No. 27.

II.

That the appraised value of the said American Gas Screw V-293, her motors, tackle, apparel, furniture, etc., is Four Thousand Dollars (\$4,000.00).

III.

That the said American Gas Screw V-293 was documented in the name of F. E. Kirk for the purpose of fishing and was given the No. V-293 by the Collector of Customs for District No. 27, and that said vessel is of a net tonnage of less than five (5) tons.

IV.

That on or about March 3, 1932, the said American Gas Screw V-293 engaged in a trade other than that for which she was licensed in violation of Section 4377 R. S., 46 U. S. C. A. 325.

V.

That because of the violation of the aforesaid Section 4377 R. S., 46 U. S. C. A. 325, the Respondent, American Gas Screw V-293, together with her motors, tackle, apparel, furniture, etc., has become forfeit to the United States of America.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, on behalf of the United States of America, Samuel W. McNabb, United States Attorney for the Southern District of California, and Frank M.

Chichester, Assistant United States Attorney for said District, pray the usual process and monition of this Honorable Court to issue against the said American Gas Screw V-293, her motors, tackle, apparel, furniture, etc.; that all persons concerned or interested in the said vessel, her motors, tackle, apparel, furniture, etc., may be cited to appear and show cause why a forfeiture of the same should not be decreed; and that all due proceedings being had thereon, this Honorable Court may be pleased to decree for the forfeiture aforesaid: that the said American Gas Screw V-293, her motors, tackle, apparel, furniture, etc., may be condemned, as aforesaid, according to the statutes and the Acts of Congress in that behalf provided.

Samuel W. McNabb

SAMUEL W. McNABB,

United States Attorney,

Frank M. Chichester

FRANK M. CHICHESTER,

Assistant United States Attorney,

Attorneys for Libelant.

[Endorsed]: Filed Mar. 11, 1932. R. S. Zimmerman, Clerk, by C. A. Simmons, Deputy Clerk.

UNITED STATES OF AMERICA)

) ss (SEAL)  
Southern District of CALIFORNIA ) No. 5406-H

THE PRESIDENT OF THE UNITED STATES OF AMERICA, To the Marshal of the United States, for the Southern District of California, Greeting:

WHEREAS, a libel in rem hath been filed in the District Court of the United States for the Southern

District of California, on the 11th day of March, in the year of our Lord one thousand nine hundred and thirty-two, by the United States of America, Libellant, vs AMERICAN GAS SCREW V-293, her motors, tackle, apparel, furniture, etc., by Samuel W. McNabb, United States Attorney for the Southern District of California, in a cause of condemnation, seizure and sale, for the reasons and causes in the said Libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said AMERICAN GAS SCREW V-293, her motors, etc., may be cited in general and special to answer the premises and all proceedings being had that the said AMERICAN GAS SCREW V-293, her motors, tackle, apparel, furnityre, etc., may for the causes in the said Libel mentioned, be seized, condemned and forfeited to satisfy the demands of the Libellant.

YOU ARE THEREFORE HEREBY COMMANDED to attach the said AMERICAN GAS SCREW V-293, etc. and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Southern District of California, Central Division, at the Courtroom of the Honorable Harry A. Hollzer, Judge of the said United States District Court, in the Federal Building, in the City of Los Angeles, State of California, on the 4th day of April, A. D. 1932, at 10 o'clock in the forenoon of the same day, if that day

shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

WITNESS, the Honorable WM. P. JAMES, Judge of said Court, at the City of Los Angeles, in the Southern District of California, this 11th day of March, in the year of our Lord one thousand nine hundred and thirty-two, and of our Independence the one hundred and fifty-sixth.

R. S. ZIMMERMAN, Clerk

C. A. Simmons, Deputy Clerk

Samuel W. McNABB, United States Attorney,

Frank M. Chichester, Asst. U. S. Attorney,

Proctor for Libellant

In obedience to the within monition, I attached the American Gas Screw V 293 therein described, on the 16th day of March, 1932 and have given due notice to all persons claiming the same, that this Court will, on the 4th day of April, 1932 (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated March 16, 1932

A. C. Sittel, U. S. Marshal

By ....., Deputy

[Endorsed]: Filed Mar 17 1932 R. S. Zimmerman,  
Clerk By Theodore Hocke, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

In Admiralty Stipulation for costs.

WHEREAS, a libel has been filed in this Court by the United States of America against the said respondent for the reasons and causes in the said libel mentioned, and FALON E. KIRK, the owner of said AMERICAN GAS SCREW V-293, et-cetera, above named, and THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, a corporation organized, created and existing under and by virtue of the laws of the State of New York, with its principal office at 80 Maiden Lane, New York City, and duly authorized to and doing business in the State of California, and within this district, surety for the respondent, hereby consenting that in case of default of the case on the part of the respondent, execution for the sum of Two Hundred fifty Dollars (\$250.00), may issue against the parties hereto, their goods, chattels and lands.

NOW Therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned are hereby bound in the sum of Two Hundred Fifty Dollars (\$250.00), conditioned that the respondent above named and said stipulators shall pay all costs and expenses which shall be awarded against them or either of them, by the final decree of this Court or upon an appeal by the Appellate Court.

Dated at Los Angeles, California, this 2nd day of April, 1932

Falon E. Kirk  
Respondent

THE FIDELITY AND CASUALTY COMPANY OF  
NEW YORK

[Seal] By William J. Bennett, Attorney

Acknowledged.

[Endorsed]: Filed Apr 4 1932 R. S. Zimmerman,  
Clerk By C. A. Simmons, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

In Admiralty Stipulation for costs.

WHEREAS, a libel has been filed in this Court by the United States of America against the said respondent for the reasons and causes in the said libel mentioned, and Eric Hogstrom, the Master and Charterer of said AMERICAN GAS SCREW V-293, et-cetera, above named, and THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, a corporation organized, created and existing under and by virtue of the laws of the State of New York, with its principal office at 80 Maiden Lane, New York City, and duly authorized to and doing business in the State of California, and within this district, surety for the respondent, hereby consenting that in case of default of the case on the part of the respondent, execution for the sum of Two Hundred fifty and no/100 Dollars (\$250.00), may issue against the parties hereto, their goods, chattels and lands.

NOW Therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned are hereby bound in the sum of Two Hundred Fifty and no/100 Dollars (\$250.00), conditioned that the respondent above named and said stipulators shall pay all costs and expenses which shall be awarded against them or either of them, by the final decree of this Court or upon an appeal by the Appellate Court.

Dated at Los Angeles, California, this 4th day of April, 1932

-----  
Respondent

THE FIDELITY AND CASUALTY COMPANY OF  
NEW YORK

[Seal] By William J. Bennett, Attorney

Acknowledged.

[Endorsed]: Filed Apr 4 1932 R. S. Zimmerman,  
Clerk By C. A. Simmons, Deputy Clerk



[TITLE OF COURT AND CAUSE.]

INTERVENOR'S PETITION AND ANSWER TO  
LIBEL

Comes now F. E. KIRK, an American Citizen, of Arcadia, California, owner and claimant of the American Gas Screw fishing and general utility boat, V-293 (undocumented under 5 tons) of San Diego, California, as described and mentioned in the afore-mentioned libel, her tools, apparel, engines and equipment as the same are *preceded* against in the libel of the United States of America, the libelant in the above mentioned cause, and answering said libel and complaint, alleges as follows:

I.

Claimant and intervenor admits all the allegations contained in Paragraphs I and II of said libel.

II.

Answering Paragraph III claimant and intervenor admits that the said boat was documented for the principal purpose of fishing under customs catalogues No. 1511 and 1512 and admits that said vessel is of a net tonnage of less than five tons.

III.

Answering Paragraph IV of said libel claimant and intervenor denies each and every allegation contained in said paragraph IV and denies that at the time said vessel was so seized that it was being operated for any other purpose than the lawful purpose for which she was documented, and denies that said vessel has at any time or at all been operated in violation of any law, rule and regulation of the Government of the United States.

## IV.

Claimant and intervenor denies each and every allegation contained in said Paragraph V and denies that on the date said vessel was so seized that it had become or has become forfeited to the United States of America for the violation of any law, rule or regulation of the United States Government as set forth in said libel or for any other purpose or at all.

FURTHER ANSWERING SAID LIBEL AND AS AN AFFIRMATIVE DEFENSE, CLAIMANT AND INTERVENOR ALLEGES:

## I.

That he is the owner of said vessel and at the time that the vessel was so seized as hereinbefore set forth, was being operated by one Eric Hogstrom under charter from this claimant. That said vessel was so chartered to said Hogstrom for the purposes for which said vessel was documented, to-wit, fishing and general utility purposes, the principal occupation being designated as fishing therein. That this claimant and intervenor is entitled to the possession of said vessel as the sole owner thereof subject only to the charter party agreement entered into with the said Eric Hogstrom as aforesaid.

WHEREFORE, claimant and intervenor prays that the libelant have and take nothing by this action; that the said vessel mentioned and described herein and in said libel be returned to this claimant and intervenor and that said claimant and intervenor be adjudged to be the sole and exclusive owner of said vessel and entitled to the possession of the same, subject only to the claims of the said Hogstrom under his charter party agreement and

this claimant and intervenor have such other and further relief as to the court may seem meet and just and equitable and recover his costs herein.

John B. Yakey

Attorney for claimant and intervenor

Verified.

[Endorsed]: Filed Apr. 4, 1932. R. S. Zimmerman, Clerk, by C. A. Simmons, Deputy Clerk.

---

[TITLE OF COURT AND CAUSE.]

CLAIM OF F. E. KIRK

Comes now F. E. Kirk, an American Citizens of Arcadia, California, and says that he is the owner of the American Gas Screw fishing and general utility boat, V-293 (undocumented under 5 tons) of San Diego, California, as described and mentioned in the afore mentioned libel, her tools, apparel, furniture, engines and equipment, and intervening for his interest in the said property, appears before this honorable court and claims the said property, and states he is the true and sole owner thereof and that no other person or persons are the owners or interested therein other than Eric Hogstrom, an American Citizen of San Pedro, California, who has said vessel under charter for a period of six months from the 1st day of November, 1931.

That he acquired said property by having same constructed for his account on July 29, 1931 and that this claimant has been the sole owner thereof continuously from said date of construction.

WHEREFORE, said claimant prays that this honorable court will be pleased to decree the restitution of the

aforesaid property, subject to said charter party contract and for such other relief as to the court may deem just and proper.

F. E. Kirk  
Claimant

John B. Yakey  
Attorney for Claimant

Verified.

[Endorsed]: Filed Apr. 4, 1932. R. S. Zimmerman,  
Clerk, by C. A. Simmons, Deputy Clerk.

---

[TITLE OF COURT AND CAUSE.]

CLAIM OF ERIC HOGSTROM.

Comes now Eric Hogstrom, an American Citizen of San Pedro, California, and says that he is the charterer of American Gas Screw fishing and general utility boat, V-293 (undocumented under 5 tons) of San Diego, California, as described and mentioned in the afore-mentioned libel, her tools, apparel, furniture, engines and equipment, having chartered the same from F. E. Kirk, the owner thereof, on or about the 1st day of November, 1931, for a period of six months from the date thereof, and was operating said boat on March 3rd, 1932, on which date the vessel was seized by an officer of the United States Government for an alleged violation of Section 4377 R. S. 46 U. S. C. A. 325, in waters directly outside of San Pedro Harbor, bound for Santa Cruz Island.

That this claimant at the time said boat was so seized was the sole operator of said boat under said charter and no other person had any interest in said boat other than the said F. E. Kirk, from whom the same was char-

tered. That at the time said boat was so seized as afore-  
said the same was being operated by this claimant in a  
lawful manner and in compliance with the laws, rules and  
regulations of the United States Government.

WHEREFORE, this claimant prays that this honorable  
court will be pleased to decree the restitution of the afore-  
said property to this claimant subject to the rights of the  
said F. E. Kirk, owner thereof, and for such other relief  
as the court may deem just and proper.

Eric Hogstrom  
Claimant

John B. Yakey  
Attorney for claimant

Verified.

[Endorsed]: Filed Apr. 4, 1932. R. S. Zimmerman,  
Clerk by C. A. Simmons, Deputy Clerk

District Court of the United States of America  
Southern District of California

|   |   |             |
|---|---|-------------|
| UNITED STATES OF AMERICA,               | ) |             |
|   | ) |             |
| vs.                                     | ) | No. 5406-H. |
|   | ) |             |
| AMERICAN GAS SCREW V-293,               | ) |             |
| her motors, tackle, apparel, furniture, | ) |             |
| etc.                                    | ) |             |

THE PRESIDENT OF THE UNITED STATES OF  
AMERICA

To BUCK McGOWAN, 2719 Hollyridge, Hollywood,  
California, or West Basin Marine Charters, West  
Basin Yacht Anchorage, Wilmington, California,  
GREETING:

You are hereby required, that all and singular business and excuses being set aside, you appear and attend before the Honorable Harry A. Hollzer, Judge of the District Court of the United States for the Southern District of California, Central Division, to be held at the Court Room of said Court, in the City of Los Angeles, on the 28th day of April, A. D. 1932, at 10 o'clock A. M., then and there to testify in the above-entitled cause, now pending in said Court, on the part of the above-named plaintiff, and bring with you your checks, numbers 242, 257, 162 issued to Eric Hogstrom, and any others issued for the use of V-293. And for a failure to attend, as above required, you will be deemed guilty of contempt of Court and liable to pay to the party aggrieved all loss and damage sustained thereby.

WITNESS, The Hon. Harry A. Hollzer, Judge of the District Court of the United States for the Southern District of California, and the seal of the said Court, this 26th day of April in the year of our Lord one thousand nine hundred and thirty-two and of our Independence the one hundred and fifty-sixth.

[Seal]

R. S. ZIMMERMAN, Clerk.  
By C. A. Simmons, Deputy Clerk.

#### MARSHAL'S RETURN

I have served this writ personally, by copy, on BUCK McGOWAN, L. A. this 27th day of April, A. D. 1932

A. C. Sittel

U. S. Marshal.

By P. J. Hayselden

Deputy.

[Endorsed]: Filed May 5 1932 R. S. Zimmerman,  
Clerk By Theodore Hocke Deputy Clerk

[TITLE OF COURT AND CAUSE.]

FINDINGS OF FACT and CONCLUSIONS OF  
LAW.

The above entitled action having come on for trial before the Honorable Harry A. Hollzer, Judge of the above entitled court, on May 4, 1932, the libelant therein appearing by and through Samuel W. McNabb, United States Attorney for the Southern District of California, and Frank M. Chichester, Assistant United States Attorney for said District, and Louis J. Somers, Assistant United States Attorney for said District, and the claimants, Eric Hogstrom and F. E. Kirk, appearing by and through their attorney, John B. Yakey, and a jury having been expressly waived by a stipulation heretofore filed, and evidence, both oral and documentary, having been introduced and memoranda of points and authorities having been filed, and the arguments of counsel having been heard, the Court makes its following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

That the respondent American Gas Screw V-293, her motors, tackle, apparel, furniture etc., were seized by the United States Coast Guard, Section Base No. 17, while standing to sea from San Pedro Harbor in the vicinity of Point Firmin and at a distance of approximately one and one-half ( $1\frac{1}{2}$ ) miles from Point Firmin on March 3, 1932; that the said seizure of the said respondent vessel, her motors, tackle, apparel, furniture etc., was thereafter adopted by the Collector of Customs of the Port of Los

Angeles in California, District No. 27; that thereafter and upon the filing of the Libel herein the said vessel, her motors, tackle, apparel, furniture etc., were attached by the United States Marshal pursuant to process regularly issued out of the above entitled court.

II.

That the appraised value of the said respondent vessel, her motors, tackle, apparel, furniture etc., is \$4,000.00.

III.

That the respondent vessel was documented in the name of F. E. Kirk for the purpose of fishing and was given the number V-293 by the Collector of Customs for the Port of San Diego on or about October 14, 1931.

IV.

That on March 3, 1932, the said respondent vessel transported certain foodstuffs, tobacco, magazines and merchandise from the Harbor of Los Angeles, California, to a place on the navigable waters of the United States where the said respondent vessel was seized by the United States Coast Guard as heretofore set forth; that the said transportation of the said foodstuffs, tobacco, magazines and merchandise was for a consideration, the amount of which is unknown, and was an engagement in trade by the said respondent vessel.

CONCLUSIONS OF LAW.

From the aforementioned Findings of Fact the Court makes its following conclusions of law:

I.

That the said respondent vessel, together with her motors, tackle, apparel, furniture etc., engaged in a trade



other than that for which she was licensed or documented in violation of Section 4377, R. S., 46 U. S. C. A. 325.

II.

That because of the violation of the said Section 4377, R. S., the said respondent American Gas Screw V-293, together with her motors, tackle, apparel, furniture etc., has become forfeited to the United States of America.

Dated: May 9, 1932.

Hollzer

United States District Judge

APPROVED AS TO FORM as provided in Rule 44:

John B. Yakey

John B. Yakey,

Attorney for Claimants.

[Endorsed]: Filed May 10, 1932. R. S. Zimmerman, Clerk, by M. R. Winchell, Deputy Clerk.

---

[TITLE OF COURT AND CAUSE.]

FINAL DECREE OF CONDEMNATION FORFEITURE AND ORDER OF DISPOSITION

The above entitled action having come on for trial before the Honorable Harry A. Hollzer, Judge of the above entitled court, on May 4, 1932, a jury in said matter having been expressly waived by a stipulation in writing heretofore filed, and the Court having heard all of the evidence, both oral and documentary, introduced on behalf of the libelant, the respondent and the claimants, and having filed its Findings of Fact and Conclusions of Law, and it appearing from all of the evi-

dence introduced at the trial of said action that the respondent vessel, together with her motors, tackle, apparel, furniture, etc., have become forfeited to the United States of America,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED and DECREED that the said American Gas Screw V-293, together with her motors, tackle, apparel, furniture, etc., be and the same accordingly are condemned and forfeited to the United States of America.

IT IS FURTHER ORDERED that the said respondent vessel, together with her motors, tackle, apparel, furniture etc., be delivered by the United States Marshal for the Southern District of California, to the United States Coast Guard, Section Base No. 17, Los Angeles, California, to be held by the said Commander to await the final disposition of the said vessel pursuant to the order of the above entitled court.

IT IS FURTHER ORDERED that all costs incurred in the seizure, storage, condemnation and forfeiture of the said respondent vessel be paid by the claimants herein, the said costs to be taxed herein in the sum of \$331.04. The said costs, when taxed, shall be paid by the claimants or their sureties within four days from the filing of this Decree, upon the giving of notice to the proctor herein appearing for the claimants herein. Service of this Decree upon the said proctor shall be deemed sufficient notice. In the event the costs as taxed herein are not paid within the time heretofore designated, execution shall summarily issue against the claimants, their surety or sureties, their lands, goods and chattels according to their stipulation heretofore filed.

Dated this 9 day of May, 1932.

HOLLZER

United States District Judge

APPROVED AS TO FORM as provided by Rule 44:

John B. Yakey

John B. Yakey

Proctor for Claimants

Decree entered and recorded May 10 1932

R. S. ZIMMERMAN, Clerk

By M. R. Winchell, Deputy Clerk

[Endorsed]: Filed May 10 1932 R. S. Zimmerman,  
Clerk By M. R. Winchell, Deputy Clerk

---

[TITLE OF COURT AND CAUSE.]

REPORTER'S TRANSCRIPT OF TESTIMONY  
AND PROCEEDINGS ON TRIAL.

---

APPEARANCES:

For the Libelant:

Frank M. Chichester, Esq.,  
Assistant United States Attorney  
Louis J. Somers, Esq.,  
Assistant United States Attorney

For the Claimants F. E.

Kirk and Eric Hogstrom:

John B. Yakey, Esq.,  
815 Financial Center Bldg.,  
Los Angeles, California.  
TRinity 0654.

---

Reported by

J. E. Healy.

(Testimony of Muller S. Hay)

LOS ANGELES, CALIFORNIA, MONDAY, MAY  
16, 1932.

10:00 o'clock A. M.

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(This cause coming on regularly for trial this day, the following proceedings were had):

MR CHICHESTER: This matter is an action under Section 4377 of the Revised Statutes in which it is alleged that the respondent vessel was engaged in a trade other than that for which it was licensed, and we have filed with the clerk a stipulation waiving a jury in this matter. I believe that in an admiralty case a jury is not required in any event, but we are taking this extra precaution to avoid any possible question.

THE COURT: Both sides have joined in the waiver?

MR YAKEY: Yes, sir, we have waived a jury, your Honor.

MR CHICHESTER: I will call Commander Hay.

MULLER S. HAY,

called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR CHICHESTER:

Q What is your business or occupation, Mr. Hay?

A I am a commander in the United States Coast Guard, commanding Section Base Number 17, San Pedro, California.

Q How long have you been so employed, Captain Hay?

(Testimony of Muller S. Hay)

A I have been employed in the Coast Guard 31 years. As commander of Base Number 17, a year and three months.

Q I hand you a document with the signature that purports to be the signature of F. L. Austin, and ask you if you recognize that signature? (Handing document to witness).

A I do.

Q Is that the signature of F. L. Austin?

A That is the signature of F. L. Austin.

Q Who is F. L. Austin?

A F. L. Austin is the aide to the commander of the California Division, United States Coast Guard, San Francisco.

Q I will ask you if you have ever seen that letter, before?

A I have.

Q When did you see that?

A It came through the mails and arrived at Section Base 17 about the 27th or 28th of February, 1932.

Q That was received by you in the ordinary course of business with your superior officer in San Francisco?

A It was.

Q And is Mr. F. L. Austin your superior officer in San Francisco?

A Mr. Austin, by direction, is my superior officer as representing the commander of the California Division.

MR CHICHESTER: I offer this document in evidence as Government's Exhibit Number 1.

MR YAKY: I object to the introduction of the document, if the Court please, on the ground that it is incom-

(Testimony of Muller S. Hay)

petent, irrelevant, and immaterial, and no proper foundation has been laid. It can in no way affect the issues involved in this case. It does not purport, as I understand it, to be what was taken from this boat at the time of its seizure.

MR CHICHESTER: I will offer it, then, for identification. I now offer it for identification. I withdraw the former offer.

THE COURT: It will be marked Government's Exhibit Number 1 for identification only.

(Government's Exhibit Number 1 for identification).

MR CHICHESTER: This letter reads as follows:—

MR YAKEY: (Interrupting) Just a moment. Is that the one you offered for identification?

MR CHICHESTER: Yes.

MR YAKEY: We object to it being read in evidence at this time.

MR CHICHESTER: I do not intend to read the letter in evidence. I do not believe your Honor has had an opportunity to read it. If your Honor has read it, of course, the contents are obvious.

MR YAKEY: It is only offered for identification at this time, and it is not proper to go into evidence until it is admitted.

THE COURT: Yes. What is the question involved?

MR CHICHESTER: This is to lay a foundation concerning the instructions the commander has given to his men in the Coast Guard pursuant to this letter.

THE COURT: Well, until the document is received in evidence, why not proceed without reading from the document?

(Testimony of Muller S. Hay)

MR CHICHESTER: Very well.

Q BY MR CHICHESTER: Captain Hay, after receiving this letter, did you take any steps with respect to the contents thereof?

A I did.

Q What did you do?

MR YAKEY: I object to that, if your Honor please, as being incompetent, irrelevant, and immaterial until that letter has been admitted in evidence.

THE COURT: Well, the witness has testified that he received a communication from a superior officer.

Q BY THE COURT: Did you receive it on or shortly after the day on which it bears date?

A I received it, if I remember correctly, the day after it bears date. It takes about that length of time for mail to arrive to us from San Francisco.

Q Now then, did any vessel under your direction thereafter take any steps with reference to any other boat?

A A vessel under my direction did so.

Q Well, now then, what took place?

A The contents and information contained in this letter was given to the various officers and men in charge of our patrol boats. They were directed to exert themselves and to ascertain if any vessel leaving San Pedro or down on the high seas had quite an unusual amount of provisions on board. Having found such a boat, they were to report the circumstances to me there at the base.

THE COURT: Proceed.

Q BY MR CHICHESTER: When did you next hear from any of your boats concerning any boat about

(Testimony of Muller S. Hay)

which you had given instructions as having an unusually large supply of foodstuffs aboard.

MR YAKEY: We object to the question, if your Honor please, upon the ground that it is incompetent, irrelevant, and immaterial, and not binding upon the claimants in this case unless it refers to this particular boat in question.

MR CHICHESTER: If we get an opportunity to continue, your Honor, this all seems to be relevant.

THE COURT: Yes. You may proceed.

MR YAKEY: May I ask what is the date of that letter?

MR CHICHESTER: February 26, 1932.

THE WITNESS: On the 1st of March we received a radio message from our patrol boat, I think it was number 257, that the American Gas Screw V-293 had been boarded off Point Fermin, and that an unusual amount of provisions was found on board.

Q BY MR CHICHESTER: Did you give any commands to the party making that report to you at that time?

A He was directed to bring the boat to the Base for investigation.

MR CHICHESTER: You may cross examine.

#### CROSS EXAMINATION

BY MR YAKEY:

Q What date did you say the vessel was seized, the V-293?



(Testimony of Muller S. Hay)

A I said March 1st, but I think it was March 3rd, on second thought. I wish to correct my testimony in that respect.

Q These instructions that you testified to were given by you to the men under you?

A They were.

MR YAKEY: I think that is all. No further questions.

MR CHICHESTER: May it please the Court, we renew our offer at this time of the letter on the ground that it is material, being a letter containing a list of supplies, which with one question on voir dire I can connect with the vessel under seizure in this case.

THE COURT: Do you expect to prove that the vessel, when seized, was found to contain the articles listed in this communication?

MR CHICHESTER: Most of these articles.

THE COURT: Well then, why not withhold the offer until proof is made as to what was found on board?

MR CHICHESTER: The only reason I made the offer was the commander was able to identify the signature, and he testified that letter came in the ordinary course of business.

MR YAKEY: Is it necessary to take an exception to every ruling of the Court?

THE COURT: Yes.

MR YAKEY: That is necessary each time?

THE COURT: Yes.

MR CHICHESTER: That is all.

(Testimony of Stanley M. Megos)

STANLEY M. MEGOS,

called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR CHICHESTER:

Q What is your business or occupation?

A Chief Boatswain's Mate in the United States Coast Guard.

Q How long have you been so employed?

A I have been in the Coast Guard a little over 7 years and 10 months.

Q And on or about March 3, 1932, were you so employed?

A I was.

Q Will you state to the Court where you were employed and what occurred on or about that time, on the morning of March 3rd?

A On the morning of March 3rd I was officer in charge of the C. G. 257 on regular patrol, patrolling between Point Vincente and San Juan Point. Shortly before 6 o'clock we were crossing about northwesterly along the coast towards Point Fermin and sighted the V-293 standing out of the Los Angeles Outer Harbor, made contact and boarded her at 6:10 on March 3rd off Point Fermin. S. W. Gardner, Mate, First Class, was boarding the vessel, and after I put him on board he examined her and reported a large amount of supplies on board, an amount that would exceed the need of two men, which consisted of the crew of the V-293.

Q BY THE COURT: The crew of the V-293 consisted of how many?

(Testimony of Stanley M. Megos)

A Two men. I went up alongside of the V-293 and gave Gardner a list of supplies that we were watching for, that I had received from Commander of Section Base 17, and I gave this list to Gardner so he would check the supplies on board the V-293. After a short interval Gardner reported that the supplies consisted of about one-third that the list called for.

MR YAKKEY: We object to the answer and move it be stricken. The best evidence as to what the goods consisted of would be a list of the goods themselves.

THE COURT: The last statement of the witness is ordered stricken out.

MR CHICHESTER: Proceed.

Q BY THE COURT: After you received a report from one of your men what happened next?

A I asked the captain of the V-293—

Q Who was that?

A Eric Hogstrom.

Q Do you see him in the court room?

A I do, yes, sir. He is sitting on the left there.

THE COURT: May we ask counsel for the spelling of the name of the captain of the V-293.

MR YAKKEY: Eric Hogstrom—E-r-i-c H-o-g-s-t-r-o-m. He is one of the claimants in the case.

Q BY THE COURT: Now, you say you asked the captain of the V-293, Mr. Eric Hogstrom—

A (Interrupting) Where he was bound for, and he replied, "Bound for San Clemente Island," and then I asked him who the supplies were for, where they were for, whether they were for his own use or whether he was taking them somewhere, and he told me he was taking

(Testimony of Stanley M. Megos)

them to a fisherman on San Clemente Island. I asked if he had any manifest aboard, and he said, "No,"—that the only thing he had—I asked the boatswain's mate if he had a license, and he said, "No," that the only license aboard was a fishing license. So I notified the Base by radio the circumstances, and I was directed to bring the V-293 to the Base for further investigation.

Q BY MR CHICHESTER: Didn't you ask him at the time what the name of the fisherman was on San Clemente Island that he was taking these goods to?

A I did, but I don't recall.

Q You don't recall what his answer was?

A I do not.

Q Was anything else said at the time that you recall?

A After I had received a reply to my message to the Base to bring the V-293 to the Base for further investigation, I told the boatswain's mate aboard the V-293 what orders I had received and to stay aboard and take her in to the Base.

Q When you refer to the boatswain's mate, to whom do you refer by name?

A Gardner, Boatswain's Mate, Third Class.

Q BY THE COURT: His last name is Gardner?

A G-a-r-d-n-e-r.

Q BY MR CHICHESTER: Was there anyone else aboard the V-293 other than Mr. Eric Hogstrom at the time you boarded her?

A A man who had given his name as Johnson.

Q Did he say anything at the time?

A I do not recall.

(Testimony of Stanley M. Megos)

Q You referred to a fishing license, Mr. Megos. What kind of a fishing license was it, if you know?

A The number of it is 2792; it is posted on the hatch of the engine room.

Q Was that a California fishing license?

A Yes.

Q Issued by the State of California?

A Yes.

Q Did you notice any fishing tackle aboard the boat at that time?

A I was not aboard the boat at that time, but I was aboard the boat when she was brought into the Base, when we arrived at the Base, and there was no fishing tackle aboard the vessel.

Q That was at the Base?

A Yes.

Q How far were you from the boat when she was proceeding from the point of seizure to the Base?

A I was never over a quarter of a mile astern.

Q Did you see anything thrown overboard during the trip in?

A I did not.

Q Did you see any guns aboard the boat at that time, of any kind?

A I did not.

Q Was there any ammunition of any kind aboard the boat?

A I did not see any.

Q I hand you five pictures. First, I will refer to them singly. The first picture I hand you and will ask you what that picture is, if you know?

(Testimony of Stanley M. Megos)

A It is a picture of the Gas Screw V-293 lying alongside of the towboat 257 by the dock of Section Base 17.

Q Were you present when the picture was taken?

A I was.

MR CHICHESTER: I offer the picture in evidence as Government's Exhibit Number 1.

THE COURT: The same will be marked Government's Exhibit Number 2.

(Government's Exhibit Number 2).

Q BY MR CHICHESTER: I hand you another picture and ask you what that is?

A This is a picture of the same vessel at the same place, but a stern view.

Q You were present when that picture was taken?

A I was.

MR CHICHESTER: I offer it in evidence as Government's Exhibit Number 3.

THE COURT: So marked.

(Government's Exhibit Number 3).

Q BY MR CHICHESTER: What is this picture which I now show you? (Handing picture to witness).

A This is a picture of the supplies taken from the V-293 and put on board at the bow of the C. G. 257 at Section Base 17.

Q You were present when that picture was taken?

A I was.

MR CHICHESTER: I offer it in evidence.

THE COURT: The same will be marked Government's Exhibit Number 4.

(Government's Exhibit Number 4).

(Testimony of Stanley M. Megos)

Q BY MR CHICHESTER: What is this picture which I now show you? (Handing picture to witness).

A This is a view of the same supplies taken on board the C. G. 257, but at a different angle.

MR CHICHESTER: I offer it in evidence as Government's Exhibit next in order.

THE COURT: It will be marked Government's Exhibit Number 5.

(Government's Exhibit Number 5).

Q BY MR CHICHESTER: What is this picture? (Handing picture to witness).

A This is a view of the stern, of the cockpit of the V-293, at Section Base 17, with the skidboard in place.

Q You were present when this picture was taken?

A I was.

MR CHICHESTER: I offer it in evidence.

THE COURT: That was taken of the boat when seized?

A Yes, sir.

THE COURT: It will be marked Government's Exhibit Number 6.

(Government's Exhibit Number 6).

Q BY MR CHICHESTER: Did you weigh the supplies taken from the V-293?

A I did.

Q Do you know what that weight was?

A I do not recall the exact weight, but it was over 1200 pounds gross weight.

Q Do you have a list of the cargo of the foodstuffs that you were to look out for?

(Testimony of Stanley M. Megos)

A I did. I turned in the itemized list to the commander of Section Base 17.

Q At the time or prior to the time of seizure did you have a list of goods that you were to look out for?

A Prior to the time of departure for the patrol I received a letter from the commander of Section Base 17 with a list of goods we were supposed to look out for, out-bound or on the high seas.

Q Do you have that list with you?

A I do not; it is on board the vessel.

Q Where is it?

A It is on board the C. G. 257.

Q I will show you Government's Exhibit for identification Number 1 containing a list of foodstuffs, and ask you if that list compares with the list received by you from the commander of Section Base 17?

MR YAKEY: I object to the question on the ground that it is incompetent, irrelevant, and immaterial. The stuff that was found on the V-293—whether it compared with this—that is a matter of comparison and not one of opinion of the witness.

THE COURT: Of course, that matter may be covered in another way. Has anyone in the court room a list of the commodities seized?

THE WITNESS: I believe Commander Hay has.

THE COURT: When someone is prepared to identify the list, perhaps you gentlemen can agree as to what was on board. Is there any controversy as to what was on this boat?



(Testimony of Stanley M. Megos)

MR YAKEY: I don't know, your Honor. We have a list, and it approximates, as given from memory, the supplies on the boat.

MR CHICHESTER: I have here a certified copy purported to be signed by Stanley M. Megos of the list of provisions found on the V-293 on March 3, 1932.

THE COURT: Let the witness identify it.

Q BY MR CHICHESTER: I will ask you if that is your signature on the bottom of the document I now hand you?

A That is my signature.

MR YAKEY: Just a moment, please. If you will let us check this, Mr. Chichester. So that the court will understand it, we have here and are willing to submit it, a bill from the Henderson Meat Market, a list of the stuff purchased and taken aboard the boat.

MR CHICHESTER: If properly identified, we have no objection to such a list, but whether or not it compares with the list taken from the boat, we do not know.

MR YAKEY: If we check it up, and it compares, there is no dispute.

MR CHICHESTER: We offer this document which has been identified over the signature of Mr. Megos.

MR YAKEY: May I ask this question, preliminarily.

Q BY MR YAKEY: Mr. Megos, did you make this list yourself?

A I made that list myself.

MR CHICHESTER: Any objection?

MR YAKEY: I think not—for what it is worth.

(Testimony of Stanley M. Megos)

THE COURT: It will be received as Government's Exhibit Number 7.

(Government's Exhibit Number 7).

MR YAKEY: Simply as a memorandum of what he got aboard the boat.

MR CHICHESTER: You may cross examine.

### CROSS EXAMINATION

BY MR YAKEY:

Q Mr. Megos, to what place did Captain Hogstrom say he was bound for?

A San Clemente Island.

Q Didn't he tell you he was bound for Santa Cruz Island?

A No, he did not.

Q Where is San Clemente from Santa Cruz Island?

A From Santa Cruz Island, roughly, about 90 miles.

Q What is that?

A Roughly, about 90 miles south of Santa Cruz Island.

Q BY THE COURT: Well, in the first place, what is the approximate distance and direction of Santa Cruz Island from San Pedro or the Harbor?

A Santa Cruz Island is about West a half, North two of the San Pedro light. San Clemente Island is about—the eastern end of San Clemente Island, Pyramid Head, is about South, a quarter West of San Pedro light.

MR CHICHESTER: We may be able to expedite matters. We have a chart showing San Clemente Island and Santa Cruz Island.

THE COURT: That is produced here from the Government's files?

(Testimony of Stanley M. Megos)

MR CHICHESTER: This particular chart was found by me yesterday on the vessel, on the V-293.

THE COURT: Do you want to set it up on the board here?

MR CHICHESTER: Yes, if we may.

THE COURT: Maybe it will help us out.

(Map placed on blackboard).

Q BY MR CHICHESTER: Will you step to the chart and point out to the Court the approximate location of the seizure of the V-293 on March 3rd and also the location of Santa Cruz Island and San Clemente Island?

A Santa Cruz Island is here. (Indicating). San Clemente Island *Island* is here. (Indicating). San Pedro light is here. (Indicating). The seizure of the V-293 was about in there. (Indicating).

MR CHICHESTER: May it please the Court, I suggest that the witness mark the points indicated for facility.

THE COURT: Are you offering the map in evidence?

MR CHICHESTER: Yes, sir, I intend to offer it in evidence.

THE COURT: The map will be marked Government's Exhibit Number 8.

MR YAKEY: For the purposes of illustration.

THE COURT: Yes, it will serve to illustrate and clarify the testimony. Now then, have we any red crayon or red pencil? Will you mark the figure 1, the place where the V-293 was seized.

THE WITNESS: This is a small scale map, your Honor, and it is very hard to determine.

THE COURT: We understand it will be an approximate location.

(Testimony of Stanley M. Megos)

THE WITNESS: Bearing on the San Pedro light at the time, it was 32° true.

THE COURT: You have marked that "1", the approximate place where you seized the vessel.

MR CHICHESTER: Mark it large enough, if you will, please.

THE COURT Now then, mark San Clemente Island with the figure "2", and marked Santa Cruz Island with the figure "3".

(Witness marks map on blackboard as indicated).

MR CHICHESTER: Now, will you state what direction the V-293 was headed at the time you hailed her?

A She was headed south by southwest, magnetic.

Q With respect to San Clemente Island, will you indicate on the chart the approximate general direction of the vessel?

A She was heading in a general direction to the north, the west end of Santa Catalina Island.

Q Did you take the bearings at the time.

A I took bearings at the time of Point Fermin light and San Pedro Bay light.

Q About how far from the mainland was it, from the end of the breakwater?

A About a mile and a half, about a mile or a mile and a half.

Q What was the color of the vessel?

A Similar to a battleship gray.

MR CHICHESTER: I believe that is all.

CROSS EXAMINATION (resumed).

BY MR YAKEY:

Q Mr. Megos, did you see aboard the V-293 its local award of identification number; did you see it at the time that you made the seizure?

(Testimony of Stanley M. Megos)

A I don't understand the question.

Q Do you know what I mean by a local identification number?

A Is that the Customs House number assigned to a vessel?

Q Yes, the number that is assigned to a vessel.

A Yes, she has it on each bow.

Q Did you see the certificate?

A I was not aboard the vessel at the time.

Q You were not aboard the vessel yourself. You did not go aboard the vessel?

A. I did not, not at that time.

Q When did you take a list of the goods that were aboard?

A After she was brought in to Section Base 17.

Q Did you see the certificate of award of local identification number on board the boat?

A I do not recall.

Q You do not recall ever seeing that. Do you know what the boat was operating under, whether under a local identification number?

A She had a fishing license posted on her half deck.

MR CHICHESTER: We will stipulate that this boat was operating under the identification number V-293.

Q BY MR YAKKEY: The license you referred to was a license issued by the State of California and not by the Government?

A It is.

Q You say where the boat was seized was about a mile and a half out from the end of the breakwater?

A Between a mile and a mile and a half.

(Testimony of Stanley M. Megos)

Q Is there a buoy out there?

A Not in that vicinity. There is a buoy off Point Fermin.

Q At the time that you had this conversation with Captain Hogstrom in regard to where he was going, did he show you a letter from anyone?

A He did not.

Q And you never saw any letter from anyone he had received?

A I did not.

Q During any interview that you had with Captain Hogstrom?

A I did not.

Q Didn't he tell you who he was going to see at the time that you had him arrested, that is, as to his destination?

A At what time?

Q At the time of the seizure.

A Before he was brought in to the Base, he said he was going to some fisherman's place at San Clemente Island with the stores.

Q And did he give the name of the fisherman?

A I do not recall what name he said.

Q Would you recall it if you heard it?

A I do not believe so.

Q Was it Englund? Does that sound familiar to you?

A It did not sound like that at the time.

Q At the time that you made the seizure you had no trouble in getting Captain Hogstrom to talk to you, did you?

MR CHICHESTER: That is objected to as calling for the conclusion of the witness and clearly incompetent in this case.

(Testimony of Stanley M. Megos)

MR YAKEY: I will withdraw that question.

Q BY MR YAKEY: Captain Hogstrom freely answered any questions that you asked him, did he not?

A He did.

Q And you found no liquor aboard?

A I was not aboard the vessel at the time.

Q Did any of your men report as having found any liquor aboard?

A They did not.

Q Did you check the equipment of the boat at the time the seizure was made?

A I did not.

Q. Did you check it at any time thereafter?

A I did not take an itemized copy of it.

Q Did you notice any other violation of any rule or regulation, either of the statutes or the regulations of the department with regard to the equipment of the boat, as to its lights or whistles and so forth?

A There were no violations reported by the boarding officer?

Q It is customary immediately on making a seizure of that kind to check and ascertain those facts?

A Her equipment as far as the motor boat laws were concerned was checked by the boarding officer when he went aboard her.

MR YAKEY: All right, that is all.

#### REDIRECT EXAMINATION

BY MR CHICHESTER:

Q What type of vessel is this V-293?

A She is a speed boat with a Liberty, with a Lee conversion.

(Testimony of Stanley M. Megos)

Q What does that mean, does that refer to the motor?

A It refers to the motor—and 300 horsepower, if I recall it correctly.

Q How many cylinders in the motor, if you recall?

A I believe a Liberty is 8 cylinders.

Q What would be the approximate speed of that boat?

MR YAKEY: If he knows.

A I do not know the speed of the vessel.

Q BY MR CHICHESTER: Are you able to approximate the speed from your experience with boats of that type? You may answer yes or no to that.

A Yes.

Q What would you estimate the speed of that boat to be?

A About 26 knots.

Q 26 knots per hour?

A Per hour.

Q What would that be approximately in miles per hour?

A Roughly, a knot is 1.8 statute miles.

MR YAKEY: Read that answer, please.

THE WITNESS:  $1\frac{1}{8}$  statute miles.

Q BY MR CHICHESTER: Have you had an opportunity to see fishing boats in and out of the harbor in San Pedro?

A I have.

Q Was this boat built as a fishing boat is built?

MR YAKEY: We object to that, if the Court please, unless he knows what it was built for.

MR CHICHESTER: I am asking him if it was built as a fishing boat is built?



(Testimony of Stanley M. Megos)

A I have never seen a fishing vessel on this coast with a Liberty motor in it engaged in the fishing trade.

Q BY MR CHICHESTER: Did it have any equipment for icing any fish?

A It did not.

Q You have already stated there was no equipment for engaging in fishing?

A There was not.

Q What would be the approximate gasoline capacity of this vessel, if you know?

A I do not know her gasoline capacity.

MR CHICHESTER: That is all.

THE COURT: Now, you said this boat, the V-293, had no facilities for icing fish. Do the fishing boats found along this coast have facilities for icing fish?

A The biggest percentage of them have, sir.

Q BY THE COURT: What do you mean by the biggest percentage?

A Except small fishing vessels that go out for a few hours off the coast.

Q Would you call the V-293 of the type that ordinarily goes out for only two or three hours?

A He has been sighted, sir, 150 miles from port.

MR YAKEY: May I have that last answer read? Do I understand the witness to testify that this boat had been seen 150 miles off; is that what you said?

THE WITNESS: Her type of vessel has been seen, but I have seen her off San Clemente Island.

FURTHER REDIRECT EXAMINATION  
BY MR CHICHESTER:

Q About how many miles from shore is that?

(Testimony of Stanley M. Megos)

A San Clemente Island is about 48 miles from San Pedro.

Q In other words, it is a typical speedboat?

A It is.

Q Is there any place aboard the boat, any facilities for storing fish if they had been caught?

A There is a place to stow fish, but they would not last very long.

Q You are referring to the open cockpit in the stern of the vessel?

A Yes, sir, the open cockpit.

MR CHICHESTER: That is all.

#### FURTHER RECROSS EXAMINATION

BY MR YAKEY:

Q In a boat of the type of the V-293, you say that this boat in your opinion would make 26 knots?

A 26 knots.

Q What was the horsepower of the motor in that boat?

A I believe they are rated at 300 horsepower.

Q Do you know what it was, 300 horsepower?

A 300 horsepower.

Q Do you know whether it was an old engine or a new one, in fact?

A I am not a mechanic, sir.

Q You didn't make any examination of the motor of the boat or the boat itself to ascertain what speed it would probably make?

A I looked at the motor, but as I say, I am not a mechanic, and I cannot judge the condition the motor is in.

(Testimony of Stanley M. Megos)

Q. Have you ever seen a boat of that size on a trial course, a boat of that size and dimensions?

A I have seen them similar to that size, but not with a Liberty motor in them.

Q How do you base your opinion on this boat that she would go 26 knots? That would be nearly 30 miles an hour, would it not?

A The C. G. 257 had an approximate speed of  $13\frac{1}{2}$  knots an hour going into the Base. I do not know that the V-293 was going as fast as she could, but one time she was just about doubling my speed when I was following her in to the Base, and I had to blow my whistle to slow her down.

Q What speed was she making?

A C. G. 257 was traveling at approximately  $13\frac{1}{2}$  knots at the time, and she was approximately doubling my distance.

Q And that would be approximately 15 statute miles, wouldn't it? Did you mark it off on the chart or make any calculation as to the speed that she was making?

A No, I did not.

Q You are only speaking now from your memory and guess?

A I am speaking from my experience as a seafaring man.

MR YAKY: I think that is all.

MR CHICHESTER: That is all, Mr. Megos.

(Testimony of Allen Loyal Lundberg)

ALLEN LOYAL LUNDBERG,

called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR CHICHESTER:

Q What is your business or occupation, Mr. Lundberg?

A Chief Boatswain's Mate, United States Coast Guard.

Q How long have you been so employed?

A 7 years and 11 months.

Q About how long?

A 7 years and 11 months.

Q Were you so employed during the month of February of 1932?

A Yes.

Q And at any time during that month did you have occasion to contact the V-293?

A Yes.

Q Approximately what date was that?

A That was on the 28th day of February?

Q You are referring now to certain notes?

A Yes, sir, this is a boarding book.

Q Those notes made in the references were made by you?

A Yes, at the time and a few minutes after I boarded this boat I entered it in this book.

Q What was the date again?

A That was at 10:30 in the evening of February 28th.

Q Where was the boat?

(Testimony of Allen Loyal Lundberg)

A The boat was standing in the Los Angeles Harbor from seaward.

Q Did you stop the boat?

A Yes.

Q Did you come alongside?

A Yes.

Q What happened then?

A I came up alongside the boat at the pilot house, and I sent a man to go through the boat, the V-293, and inspect her and look her over, and I chanced to meet a well-known rum runner that I had occasion to bring in a time before, and during this time—

Q (Interrupting) Who was this rum runner?

A His name was Johnston.

MR YAKEY: I object to this, your Honor. This was on February 28th. The boat was seized on the 3rd of March, and I cannot see—she is not charged with any violation of the liquor laws; she is only charged, so far as the testimony shows now, with violating her license, and I cannot see how even if there was someone aboard who was a noted bootlegger, how that could be material in determining the issues in this case.

MR CHICHESTER: This boat was licensed to fish. Now, that license was good from the time it was issued in October of 1931—

MR YAKEY: (Interrupting) The boat never was licensed.

MR CHICHESTER: Well, a number was given for the purpose of fishing, and this testimony is for the purpose of showing that at no time within the experience of the witnesses we can produce has this boat ever shown

(Testimony of Allen Loyal Lundberg)

any evidence of having been fishing or having anything to do with the fishing industry.

MR YAKEY: They cannot establish that fact by attempting to show that there was somebody found aboard the boat that had been in the liquor business, the bootlegging business.

THE COURT: Well, our thought is that the witness may describe the conditions existing on the boat on February 28th, namely, three or four days prior to the seizure.

MR YAKEY: Yes, sir, I think your Honor is correct in that, but as to who was there, whether some criminal happened to be aboard the boat at the time, is not material.

THE COURT: I think the witness should be instructed to merely describe the conditions existing on the boat, without reference to anything else.

MR CHICHESTER: I have one observation with respect to probable cause which is pertinent to this particular case.

THE COURT: What is that?

MR CHICHESTER: I believe that the statement of the witness concerning the presence of anyone aboard the boat would go to establish probable cause for seizing that boat on a subsequent date under any suspicious circumstances and this circumstance would be in itself sufficient to base a probable cause or a reasonable cause for seizing that boat under suspicious circumstances. Probable cause is necessary in diverting a crew under Section 615 of the Tariff Act.

MR YAKEY: But on the other hand, you can not prove that the man who was on board the boat was a

(Testimony of Allen Loyal Lundberg)

notorious bootlegger by oral testimony in this way, and he is not here as a witness.

THE COURT: We will allow the witness to proceed. It may be the proof will fall short of the purpose contended for by the Government, but we will allow it for whatever it may be worth. You may proceed and tell us what you found on the boat.

MR YAKEY: Exception, please.

THE COURT: Yes.

A The boat had no cargo aboard. The boat was found empty, and there was three people aboard the boat at that time, three men.

Q BY MR CHICHESTER: Who were they?

A Mr. Hogstrom, and Johnston, and a third man I could not identify on account of the darkness; I did not ask his name.

Q What was the name of Mr. Johnston?

A Mr. Johnston, he has a few more names that he goes by occasionally when you see him out there; he calls himself Emerson at times, or Bowman; that is all I can recall.

Q H. L. Johnston, is that his name?

A Yes, sir, that is one of his names.

Q Did you have occasion to go on board or get inside the V-293 at that time?

A No, I did not go aboard at that time. I had part of my body over on his boat, because I leaned from my pilot house into his, to identify the man running the boat.

Q Did you notice any peculiar odor at that time?

(Testimony of Allen Loyal Lundberg)

A Yes.

Q What was that odor?

A There was a faint odor of liquor.

MR CHICHESTER: That is all.

### CROSS EXAMINATION

BY MR YAKEY:

Q Do you know where that liquor came from?

A I could not say where it came from.

Q Was it close to the man you were talking to?

A No, the man that I was talking to, that stood closest to me, I could not say that that odor came from him.

Q Did you make an investigation of the boat to ascertain at that time where this odor came from?

A Yes, sir, a man went through the boat, but he could not find any.

Q He could not find any liquor aboard the boat or any signals of any liquor?

A There was no liquor found on the boat and no signs of liquor on the boat excepting the odor of liquor.

Q What did you go aboard the boat for at that time?

A I did not go aboard the boat. I had one of my crew go aboard the boat. I sent one of the crew aboard the boat.

Q And this smell of liquor that you got, where were you at the time that you got that?

A At that time I had my head in the V-293 pilot house.

Q You had your head in the pilot house?

A Yes.

Q I thought you did not go aboard her?



(Testimony of Allen Loyal Lundberg)

A I did not go aboard her. I only got my head aboard that boat, and my elbows.

Q Standing on your boat and putting your head in the pilot house of the V-293?

A Quite right.

Q What did the man go aboard the V-293 for at that time?

A Beg pardon?

Q BY THE COURT: Why did you send one of your crew on board the V-293 that night?

A I sent a man to inspect and search this boat to see what could be found.

Q BY MR YAKEY: You did not go aboard the boat yourself?

A I did not.

Q And you made no inspection of the boat except to send a man aboard to see if there was any liquor there?

A That is quite right.

Q And did you at that time inspect the boat's documents and lights and bells and so forth?

A No.

Q And yet that was your duty and your instructions?

THE COURT: One moment. You need not answer that. Let us not argue with the witness, whether he discharged his duties or not.

MR YAKEY: I did not mean to argue with him. It was simply the way I put the question, your Honor. I think that is all.

### REDIRECT EXAMINATION

BY MR CHICHESTER:

Q Did you see any fishing tackle, any nets or any poles or any lines at the time you looked aboard that vessel?

A No.

MR CHICHESTER: That is all.

(Testimony of Lieutenant John Hay Fletcher)

LIEUTENANT JOHN HAY FLETCHER,  
called as a witness on behalf of the Government, and  
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR CHICHESTER:

Q What is your business or occupation?

A Lieutenant, United States Coast Guard.

Q How long have you been so employed?

A Approximately 7½ years.

Q Were you so employed on March 3rd of this year?

A I was.

Q Tell the Court what occurred with respect to the V-293 at that time that you had personal contact with.

A Upon receiving information that the V-293 was being brought to port for investigation, I immediately went to the dock and made an inspection of the boat and a more or less casual inventory of the stores that were aboard, and then questioned the master Eric Hogstrom, and one other member of the boat's crew whom I recall at this time as giving the name of Larsen.

Q What did Mr. Hogstrom say at that time?

A He was rather vague when asked as to where he was taking the supplies, and finally stating that he was taking the supplies to Santa Cruz Island. I asked Hogstrom to give me a list of the supplies from his memory. This he was unable to do except to name several of the larger items. I asked him where he had purchased the provisions, and he stated at a market in Los Angeles. I asked him if he had paid for the stores, and he told me he had. I asked him what they cost, and he told me he didn't pay for them. I asked him who the people were

(Testimony of Lieutenant John Hay Fletcher)

where he was to take these stores at Santa Cruz Island, and he stated to some friends of his.

Q Did he say who those friends were; did he name them at that time?

A He may have, but I cannot recall the name, but the name of Englund does sound familiar as the name that he gave me. I asked him how long he was going to stay at the island, and he informed me, "10 days to 2 weeks."

Q Did you talk to Mr. Larsen at that time?

A I did.

Q What did he say?

A Not a great deal of anything. His answers were not consistent and with very little—

MR YAKKEY: Just a minute, please.

THE COURT: Yes, sir, the statement that the answers were not consistent is ordered stricken out.

Q BY MR CHICHESTER: Do you recall any particular questions that you put to him and the answers he made to those questions?

A I do.

Q What were those questions?

A I asked Larsen where he was going, and he said, "To an island." I asked for what purpose, and he informed me that he was just going, for no particular purpose. I asked him who the stores belonged to, and he stated, "The captain"—or "master". I believe he used the word "master" instead of "captain".

Q Did he say anything else?

A He did, but I cannot recall.

MR YAKKEY: Just a minute. Is this in the presence of Captain Hogstrom, in the presence of the master?

(Testimony of Lieutenant John Hay Fletcher)

A It was not. They were held separately.

MR YAKEY: Then, if the Court please, I move to strike out all the testimony in regard to what was said by anyone else on board the boat which was not done in the presence of one of the claimants in this case, who was not a party to this action. We are not bound by any statements that this man may have made.

MR CHICHESTER: This is an action in rem against the boat, and any of the statements of the crew would be material in regard to the activities of that boat.

THE COURT: The motion will be denied.

MR YAKEY: Exception.

Q BY MR CHICHESTER: Thereafter what did you do, Lieutenant?

A I had an inventory of the stores made and had the stores photographed and searched the boat for evidence of fishing gear.

Q Did you find any?

A I did not.

Q Did you find any guns or ammunition?

A I did not.

Q Proceed.

A And I questioned Hogstrom further and held him as a witness until about 8 o'clock on the evening of the 3rd, at which time I went to his home.

Q Who else went with you?

A Mr. McFarland.

Q And who else? Was Mr. Hogstrom along?

A Mr. Hogstrom was with us at that time.

Q The three of you?

A The three of us went to his home.

(Testimony of Lieutenant John Hay Fletcher)

Q Where is his home located?

A It is located in San Pedro on Kerkoff Street. I do not recall the number, but it is between 23rd and 24th, I believe.

Q What happened on that occasion?

A Mrs. Hogstrom was asked—

Q Just a minute. Where did this conversation take place, and who was present, and about what time was it?

A In the home of Eric Hogstrom in the presence of Mr. McFarland, Mrs. Hogstrom, and Hogstrom. Mrs. Hogstrom was asked where her husband was going and when he left home that morning. She said, "I don't know." We asked how long he was to be away, and she said, "I don't know." We asked if he was to be away 10 days or 2 weeks, and she made no reply. Hogstrom asked her to produce a letter from "those people."

Q Did he name the people?

A He did not at that time. She said, "What letter?" He said, "The letter we got the day before yesterday from those people, those people on the island; you know the ones." With that she produced a letter signed by the name "Englund." I believe it was a Mrs. Englund that wrote the letter. Hogstrom asked his wife for something to drink. She said she had nothing to drink. He said, "I want milk." She said, "There is some in the ice box, and your supper is ready for you on the table."

Q What was that again?

A She said there was milk in the ice box, and that his supper was ready for him on the table.

Q Did you see the supper on the table?

(Testimony of Lieutenant John Hay Fletcher)

A I did not. I did not go into the kitchen.

Q Were you able to see from where you were?

A No, but on leaving the house I could see from one room to another, and there were dishes on the table.

Q Was there anything else said at that time that you recall now?

A We asked—the question was put to Mrs. Hogstrom if she had planned on going to Santa Cruz Island, and she said, “No,” not at that time.

Q Do you recall whether or not she was surprised to see you appear?

MR YAKEY: That is objected to as calling for the conclusion of the witness.

MR CHICHESTER: I withdraw the question.

Q BY MR CHICHESTER: What was the action or reaction of Mrs. Hogstrom when you appeared in her home?

MR YAKEY: We object to that as calling for the opinion or conclusion of the witness and is incompetent, irrelevant, and immaterial.

THE COURT: He may answer as to what he observed in the presence of Mr. Hogstrom, what took place as he entered the house.

MR YAKEY: Exception.

A Mrs. Hogstrom at first appeared to be greatly disturbed or perturbed. She later gained her composure after approximately 5 or 10 minutes of conversation. There was a decided change in Mrs. Hogstrom's attitude or bearing from the time I first entered her home until we departed. Hogstrom was asked if he had any facilities at his home for taking care of the fresh beef, ap-

(Testimony of Lieutenant John Hay Fletcher)

proximately 50 pounds that was aboard his boat, as it was highly perishable, and the weather was warm. This he stated he could do. He said he could put it in his ice box.

Q You have been aboard the V-293?

A I have.

Q Have you examined the construction of the stern of the vessel?

A I have.

Q. I will show you Government's Exhibit Number 6, what purports to be a picture of the stern of the vessel and ask you if you can describe how that vessel is built at that part?

A This stern and the compartment immediately forward is known as an open cockpit boat, with movable bottom boards which lead directly into the bilge. In this particular boat there is a movable board.

Q Will you demonstrate on the blackboard just how that removable board operates, if you can, referring to this particular boat?

A (Witness at blackboard). As a profile of the boat we will say this is the stern, (Indicating) and this would be the waterline of the boat. There is a small counter on which is a roller for sliding off the door. This is the open cockpit. (Indicating) There is a side goes in here, a side to the boat. (Indicating) . This comes up to the engine room and the pilot house here. (Indicating). This is the deck line along here. (Indicating) In the side of the boat is a movable skid, a movable board which fits against cleats in this fashion. (Indicating). The top of the board and the bottom of

(Testimony of Lieutenant John Hay Fletcher)

the board merely rest against cleats. The side of the cockpit has a board placed at an angle which forms a direct chute butting up against the lower end of this movable board. The bottom boards are open and movable, which lead directly into the bilge. The dory of the boat fits on a skid or frame up above this open cockpit in this fashion. (Indicating).

Q What is the function of that skid board that you referred to, together with the two boards on the respective sides which form the chute?

A The board is used, I presume, for getting rid of the cargo or something that could be slid up over it. It has no practical value from a seagoing standpoint.

MR YAKKEY: We object to that and move the answer be stricken, particularly that portion where he presumes what it could be used for.

THE COURT: Well, the answer will be stricken out, and we will ask the witness, from your experience as a seafaring man, having in mind this particular boat, the V-293, what purpose would such a board as you describe serve; what purposes could it be made to serve?

A The only purpose that I know it could be made to serve would be as a chute to dispose of something in a hurry, as a slide or a skid.

Q BY MR CHICHESTER: How would that operate?

A The speed of the boat lowers the stern and raises the bow. That is known as planing in a boat, which brings the skid board nearer to a horizontal position; it would be at a slight angle, and any object to be removed



(Testimony of Lieutenant John Hay Fletcher)

could be slid out over this board with a convenient roller on the stern.

Q You have seen the "Diatone", have you not?

A I have.

Q With respect to this boat, what was the type of construction?

A Very, very similar.

MR YAKKEY: We object to that as incompetent, irrelevant, and immaterial, how the "Diatone" was constructed. We are not trying the "Diatone".

MR CHICHESTER: It goes to the experience of the witness with this type of boat.

THE COURT: We will sustain the objection.

Q BY MR CHICHESTER: Have you seen other boats built like this boat?

A I have.

Q Where did you see those boats?

A In and around the harbor and on the beach.

Q You may answer this question yes or no. Do you know whether or not the V-293 was prior to the seizure on March 3rd on any suspected list given to you by the Customs agents?

A It was.

MR YAKKEY: That is objected to, if your Honor please, as incompetent, irrelevant, and immaterial. We are not here to answer what some agent might suspect.

THE COURT: Yes, it would hardly seem that someone else's suspicions would be competent. The answer will be stricken out.

(Testimony of Lieutenant John Hay Fletcher)

Q BY MR CHICHESTER: Have you had an opportunity to go aboard fishing boats in the harbor of San Pedro?

A I have.

Q Have you ever seen any fishing boat constructed similarly to the construction of this boat?

A Not for commercial fishing.

Q Have you seen any boat so constructed that was engaged to do any commercial fishing?

A Not so constructed, no.

MR CHICHESTER: That is all.

#### CROSS EXAMINATION

BY MR YAKEY:

Q What time on March 3rd was it, what hour, that you made the inspection of the V-293?

A Approximately 7:30 or a quarter to 8.

Q At the Base where she was tied?

A At the Base.

Q For what purposes did you inspect it?

A To investigate the report of this excessive quantity of stores that she was reported to have aboard.

Q Did you inspect her for any other purpose?

A I inspected her to see if any papers or documents were on board.

Q What kind of documents do you refer to?

A Such as manifests, for the cargo.

Q Do you know whether or not a boat of that size is required to have any manifests?

A Under some circumstances, if she was clearing for foreign with cargo, I believe she would; she would have to be a registered vessel, but this vessel was not.

(Testimony of Lieutenant John Hay Fletcher)

Q If she went to a non-contiguous territory, would she have to have a manifest? A I do not know.

Q BY THE COURT: What do you mean by the last answer?

A I do not know whether she would be required to have a manifest if she went to a non-contiguous country.

Q BY MR YAKEY: Did you inspect her for any violation of the Navigation Laws?

MR CHICHESTER: That is objected to as immaterial. It is not in issue in this matter. We have alleged only one violation.

THE COURT: What is the purpose of this question?

MR YAKEY: Beg pardon?

THE COURT: What is the purpose of this last question?

MR YAKEY: Simply for the purpose of showing as to whether or not the boat was properly equipped and was not violating any other provisions of the Navigation Laws.

THE COURT: The Government is not making any other charge.

MR YAKEY: That is true.

Q BY MR YAKEY: Did Mrs. Hogstrom show you a letter at the time that you were there?

A Yes, sir, Mrs. Hogstrom produced a letter.

Q I show you this document and ask you if that was the letter that she showed you? (Counsel handing document to witness).

A Certain portions of it, I believe, I could identify.

Q Just read it.

A I believe this is the letter.

(Testimony of Lieutenant John Hay Fletcher)

MR YAKEY: May we have that marked for identification as Respondent's Exhibit Number 1.

THE COURT: Mark it as Respondent's Exhibit A.

MR CHICHESTER: We have no objection to the letter, may it please the Court.

THE COURT: Are you offering it in evidence at this time?

MR YAKEY: Yes, sir, we will offer it in evidence at this time if there is no objection.

THE COURT: Very well.

(Respondent's Exhibit A).

Q BY MR YAKEY: This board that you testified to on the stern of the boat, known as a skid board, that could be used and is used, is it not, on boats that have them for the purpose of launching a small boat or tender that they carry with them, to go ashore?

A No, sir, it would be impractical.

Q Would you say that a board of that kind is not used for that purpose?

A I beg pardon, sir.

Q Would you say that an arrangement of that kind could not be used for that purpose?

A No, sir, the construction of the board would not support the weight of the dory.

Q It would depend upon how much the dory weighed, how big the dory was?

A Was that a question?

Q That would be according to the size of the dory, as to whether or not it would support it, and to the strength of the board?

(Testimony of Lieutenant John Hay Fletcher)

A In this particular case, the weight of the dory, and the construction of the board, it would not support it.

Q You would not call a light skiff that they carry to go ashore from this kind of boat, a dory?

A A dory is a particular construction of boat.

Q Are you familiar with the boats of this class used on the Columbia River and in Alaska and on Puget Sound?

A The boats of which class?

Q The boats of the class of the V-293.

A Yes, I am familiar with the boats of that class, having served on the Columbia River and also on Puget Sound and also in Alaska.

Q And you never saw a skid board used for that purpose?

A No, sir.

Q How long since you have been in that particular section?

A Which particular section?

Q The Columbia River?

A The Columbia River, three years ago.

MR YAKY: I think that is all.

#### REDIRECT EXAMINATION

BY MR CHICHESTER:

Q Have you ever seen this chart before?

A I have.

Q I will ask you when did you first see it, or rather, are these your initials that you put on the chart yesterday?

A They are.

(Testimony of Lieutenant John Hay Fletcher)

Q Where did you see that chart, and where was it located at the time?

A On the V-293.

Q Who was present at the time it was found?

A Yourself and the United States Deputy Marshal.

Q There are some figures, 246 and 15 under them and a line with 231. Do those figures mean anything to you with respect to that chart?

A To me they would refer to the calculations of a course to be steered in that the variation of this chart is 15°.

Q Will you step to the chart and indicate the direction that that course would be, assuming, of course, that the course begins at the point marked Number 1 in red pencil?

A (Witness at chart on blackboard). A true course of 246 would be this course here; (Indicating) transposing it would bring it northwest off of Catalina Island; that is the true course. To get the compass course from the true course, the variation is subtracted in this case, which would make it a magnetic course of 231°.

Q What would that course be?

A That would be the same as the true course; that would be the course the boat would have to steer by their magnetic compass.

THE COURT: That would be the course for San Clemente Island?

A It would be the course to the northwest end of Santa Catalina Island. San Clemente is to the south of Catalina.

Q BY MR CHICHESTER: This point marked Number 2 on the chart?

(Testimony of Lieutenant John Hay Fletcher)

A Yes.

Q BY THE COURT: In other words, the course indicated by those figures would not be a direct course for San Clemente Island?

A No, they would have to go either to the north or the south of Santa Catalina, because Clemente is to the southern. They would have to go either one or the other. There is no direct course to Santa Cruz or San Clemente. Catalina Island interferes.

Q What the Court had in mind is this: the course indicated by those figures which you have just delineated on this chart, would that be the course that a boat would normally take if it were headed for San Clemente Island?

A Yes, sir. I will amend that.

Q. What is that?

A I would like to amend that answer. That would be the most probable course in that it would be shorter to reach the northwest harbor of San Clemente. That is the only point of habitation.

Q And the course normally followed if the boat were headed for Santa Cruz Island?

A It would not, sir. It is about 90° opposite—about 70° opposite.

Q What is?

A The course that would take the boat to Santa Cruz Island and the one that those figures would represent.

THE COURT: Proceed.

MR CHICHESTER: That is all.

(Testimony of Thomas Noland)

RE CROSS EXAMINATION

BY MR YAKEY:

Q In regard to the construction of this chute, as you call it, on the stern of the V-293-, was there any roller?

A There is a roller on the stern of the V-293, but no roller on this chute.

Q Where was the roller? That roller was similar to rollers on other fishing boats?

A Yes, sir, some fishing boats have rollers on the stern for launching dories.

Q You made a list, you say, of the goods found aboard the V-293 at the time when she came in to the Base?

A Not a complete inventory.

Q Did you see a list or was a list shown to you by Captain Hogstrom purporting to be a list of what he had purchased?

A No, sir, he had no list to show.

MR YAKEY: That is all.

MR CHICHESTER: That is all. At this time I offer the chart in evidence.

THE COURT: It has already been marked as Government's Exhibit Number 8.

THOMAS NOLAND,

called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR CHICHESTER:

Q What is your business or occupation?

A Boatswain, U. S. Coast Guard.



(Testimony of Thomas Noland)

Q How long have you been so employed?

A 6 years.

Q Have you ever had occasion in the course of your employment as boatswain, United States Coast Guard, to come in contact or to see the British vessel "Algie"?

A Yes.

Q When was that?

A On March 1, 1932.

Q Where did you see the vessel?

A Alongside of the Norwegian ship "Niederard".

Q Where was that?

A It was off San Isidro Point, Mexico.

Q Where was that point?

A It was off Mexico, about 9 miles west of that point.

(Indicating on chart).

Q What was taking place at that time?

A She was loading.

Q Loading what?

A She was taking a load of packages, burlap packages.

Q Have you ever seen such burlap packages before?

A Yes, sir.

Q Based upon your experience in the United States Coast Guard and your contact with similar burlap packages on former occasions, would you state what in your opinion those packages contained?

MR YAKKEY: I cannot see where this is material to any issue involved in this case.

MR CHICHESTER: I am doing this to connect it with Exhibit Number 1 for identification, just offered for identification, to connect the contents of that letter with

(Testimony of Thomas Noland)

the testimony of the witness for the purpose of showing that this "Algie" is a British Rum vessel.

MR YAKEY: What has the "Algie" to do with the issues involved in this case?

MR CHICHESTER: The letter contains a list of foodstuffs, a comparable list of which was found aboard the V-293, showing the probable destination of the foodstuffs aboard the V-293, and the time the "Algie" was seen in the Mexican waters and the time it was next seen in Mexican waters.

Q BY THE COURT: You say you saw this British vessel on March 1, 1932, about 9 miles west of San Isidro Point, Mexico?

A Yes, sir.

Q At that time articles were being loaded onto the British vessel or taken from it?

A They were being loaded onto it; they were taken from the Norwegian Motorship "Niederard".

Q And the articles that you saw being loaded at that time on the British vessel, you say were wrapped in burlap?

A Burlap packages.

Q How frequently have you seen packages similarly wrapped, say, in the last 5 or 6 years that you have been in the service?

A Well, the last 2 years I have had the job of picketing those ships down there, the last year and a half, and they are continuously loading down there.

Q They are continuously loading packages wrapped in burlap similar to what you saw being loaded on this British vessel?

(Testimony of Thomas Noland)

A Yes, sir.

Q And these packages that you have frequently seen wrapped in that manner, to your knowledge, have contained what?

A Contained liquor.

Q BY MR CHICHESTER: And did you see the "Algie" on any subsequent date from March 1st in those waters or in any other waters?

A No, that is the only time I ever saw her.

Q You saw her down there alongside the "Niederard" taking apparently what was this liquor?

A Yes, March 1st.

MR CHICHESTER: I believe that is all.

MR YAKEY: I move to strike out all testimony in regard to the "Algie" as not material in this case, as not relevant to any issue involved here.

Q BY THE COURT: Where is the place where you saw the "Algie" with reference to San Clemente Island?

A It would be, roughly, about 150 miles southeast of there.

MR YAKEY: I cannot see, your Honor, how it has any bearing on the issues involved here.

THE COURT: We will reserve our ruling until the close of the case.

MR YAKEY: No cross examination.

Q BY MR CHICHESTER: How long, in your opinion, would it take for the "Algie", assuming it proceeded on northerly to reach the vicinity of San Clemente Island?

A It would take approximately 15 hours.

MR CHICHESTER: That is all.

(Testimony of Thomas Noland)

MR YAKEY: That is all.

MR CHICHESTER: At this time we renew our offer in evidence of the letter received in the ordinary course of business from the commander of the California Division of the United States Coast Guard directed to the commander of Section Base 17, referring to the British rum ship "Algie", to the list of foodstuffs which were to be transported from some shore boat, which was unknown, according to the letter. We believe that it is entirely material in connecting the contents of this letter with the vessel in this case.

THE COURT: May we see that letter and also Government's Exhibit Number 7?

(Counsel handing documents to Court).

THE COURT: May we inquire whether counsel has made comparisons between the items enumerated on the letter and the items enumerated on the list which one of the witnesses has heretofore identified?

MR CHICHESTER: Yes, sir, if your Honor please, we appreciate that they are not identical. We believe that they have some direct bearing, however, in that the type of foodstuffs is practically the same, and there is a particular reference to tobacco and fresh water on the list, all foodstuffs and materials which are ordinarily required in the staple articles of food, and though they do not match up directly, still, with the other circumstances, we believe that they are entirely material, because the boat from which the message was intercepted, the contents of which are contained in that letter, that is, the "Algie", at the time it was located in the Mexican waters and loading with liquor, and the third circumstance that they would

(Testimony of Earl Beach)

have approximated the location just off San Clemente Island on or about the 3rd of March, and the further fact that the foodstuffs in the V-293, the apparent type of rum boat, would be the type of food ordered and requested by them. The fact that it is identical I do not think is material, but I think the food was destined in that direction and referred to the "Algie".

THE COURT: It occurs to us that the Government was warranted in investigating the activities of the V-293 from the mere fact that it contained these supplies that are listed in Exhibit Number 7, irrespective of whether any such letter had been received from the Coast Guard Headquarters.

MR CHICHESTER: I think that is very probably correct. This other circumstance I felt was material in showing a probable connection. I think as far as the violation alleged in the libel is concerned, the supplies found aboard that vessel were sufficient to warrant an investigation and seizure.

THE COURT: We are inclined to think that the letter is not as yet shown to be directly connected up with this boat, the V-293. We are inclined to think the foundation is still lacking.

MR CHICHESTER: May we have an exception?

EARL BEACH,

called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR CHICHESTER:

Q What is your business or occupation?

(Testimony of Earl Beach)

A Navigation clerk in the Customs House in San Diego.

Q How long have you been so employed?

A About a year and—very nearly two years down there.

THE COURT: What do you expect to prove by this witness?

MR CHICHESTER: The documentation of the vessel at the port of San Diego.

THE COURT: Why not make the statement that you wish to prove and see if counsel can not stipulate?

MR YAKEY: I think we can stipulate to that.

MR CHICHESTER: I would like to offer the application itself.

THE WITNESS: I have a copy of the application.

MR YAKEY: Yes, a copy of the application may go in if you want to put it in.

MR CHICHESTER: We offer the copy of the application in lieu of the original, together with the certificate of number award of V-293 in evidence as Government's Exhibit next in order.

THE COURT: It will be marked as Government's Exhibit Number 9.

(Government's Exhibit Number 9).

MR CHICHESTER: This one document is the official record of the Collector of Customs in San Diego, and they have requested that, with the consent of counsel, a copy may go into evidence in lieu of the original.

MR YAKEY: We have no objection.

THE COURT: Very well. The two together will be marked as Government's Exhibit Number 9.

(Testimony of Earl Beach)

Q BY MR CHICHESTER: Mr. Beach, based upon your experience in the seafaring trade and your contacts with fishing boats and the fishing fraternity, would you say that this vessel, the V-293, was or was not a vessel equipped for the industry of fishing?

MR YAKEY: He has not shown himself competent to testify as an expert.

THE COURT: Haven't there been other witnesses here who testified that this boat had no equipment for fishing?

MR CHICHESTER: Yes, sir, your Honor, but the only matter I intended to prove here was that the vessel was put on the suspected list.

THE COURT: It strikes us there is other testimony here along that line.

MR CHICHESTER: That is all.

THE COURT: That is all.

THE WITNESS: I would like to say that those are part of our records in the Customs House.

THE COURT: That is, you would like to take the original back?

THE WITNESS: Yes, sir, I would like to take it back as soon as I could.

MR CHICHESTER: We can make a copy and substitute it, your Honor.

MR. YAKEY: It is made out in the regular Customs House form.

MR CHICHESTER: I presume it will be better for the clerk to make a copy.

THE COURT: Very well, the clerk will make a copy during the noon recess.

(Testimony of Falon E. Kirk)

MR CHICHESTER: And return the original to Mr. Beach.

THE COURT: Yes, sir, you might get it this afternoon.

MR CHICHESTER: The Government rests.

THE COURT: May we inquire how many witnesses will be called upon the part of the defense.

MR YAKEY: About four.

THE COURT: Well, we will have another case that we would like to get started on this afternoon,

MR YAKEY: I think we ought to get through with it early. I do not know how much cross examination there will be.

THE COURT: Let us proceed until 12:30.

MR YAKEY: Very well.

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## DEFENSE

FALON E. KIRK,

called as a witness on behalf of the Claimants, and having been first duly sworn, testified as follows:

### DIRECT EXAMINATION

BY MR YAKEY:

Q Where do you reside?

A Arcadia.

Q That is in Los Angeles County, California?

A Yes, sir.

Q Are you one of the claimants in the libel proceeding now in the course of trial?

A I am.



(Testimony of Falon E. Kirk)

Q Do you own the American Screw Motor Boat V-293?

A I do.

Q Are you the owner of that boat?

A I am.

Q Where was she built?

A San Diego.

Q When?

A Well, around about March of last year.

Q March of 1931?

A Yes.

Q Was she completed at that time?

A I do not recall the exact date when she was completed. I had it in mind, but now I have forgotten it.

Q Who constructed the boat for you; who built it for you?

A The Kittenberg Boat Works at San Diego.

Q Has anybody else got any interest in that boat?

A None that I know of.

Q After she was constructed what did you do with her? Did you charter the boat then to Captain Hogstrom?

A I did.

Q Did you ever operate the boat yourself?

A No.

Q Is there any encumbrance or mortgage on this boat?

A Not that I know of.

Q Not that you have put there?

(Testimony of Falon E. Kirk)

A No, sir.

Q I show you a document here. (Handing document to witness). That is your charter contract with Captain Hogstrom, isn't it?

A That is it.

MR YAKKEY: Do you want to see it?

MR CHICHESTER: Do you intend to offer it in evidence?

MR YAKKEY: Yes.

MR CHICHESTER: No objection.

THE COURT: The same is offered in evidence?

MR YAKKEY: Yes, your Honor.

THE COURT: It will be marked Respondent's Exhibit B.

(Respondent's Exhibit B).

MR YAKKEY: It is the contract under which Captain Hogstrom was operating the boat.

Q BY MR YAKKEY: What was that boat built for?

A Well, it was built primarily for fishing.

Q Had you ever had any experience yourself in fishing?

A Well, other than just once in a while in the summer going for about three weeks, and in the northern part of the state I used to go out there quite a bit.

Q What did that boat cost you?

A Well, not to be exact, I would say around \$4,500.

Q And who has been operating her since she was built?

A Eric Hogstrom.

Q You made an application for the award of a local identification number?

(Testimony of Falon E. Kirk)

A Yes, sir.

Q And that was the date of October 14, 1931?

A Approximately then, I believe, to the best of my memory.

Q And on that application you gave the principal occupation as that of fishing?

A Yes, I think we had to specify something, and we specified the principal occupation of fishing.

MR YAKEY: You may cross examine.

CROSS EXAMINATION

BY MR CHICHESTER:

Q What is your business or occupation?

A Well, service station, garage and so forth, any phase of the automobile business.

Q Are you qualified as a mechanic?

A Well, some people think so.

Q Where is your place of business located?

A Right at present it is in San Gabriel.

Q How old are you?

A I am about 37.

Q How long have you been employed in San Gabriel?

A It is my own business.

Q Where is Arcadia from your place of business?

A I would say 2½ miles east.

Q And you go out from San Gabriel to your place of business?

A That is the idea.

Q How long have you been conducting the business at San Gabriel?

A I just got it started around the first of the year.

Q Around the first of 1932?

(Testimony of Falon E. Kirk)

A Yes, sir.

Q What were you doing before that time?

A I was conducting another business in Arcadia of the same nature.

Q Whose business was that?

A My partner and mine.

Q Who was your partner?

A Mr. Howard.

Q What is his full name?

A Walter W.

Q Where is he now?

A He is in San Gabriel.

Q He is in San Gabriel now?

A Yes, sir.

Q How much of this business did you own in Arcadia with Mr. Howard?

A Half.

Q How much was the business worth, just approximately?

A I would say, if you were to sell the business and could find a buyer, we valued it about \$4,800, but really for the money expended and not taking into consideration the depreciation, I would say the business would run around \$8,000 or \$9,000.

Q How long did you operate that business?

A We operated in that location for about, I would say, 6 years.

Q And prior to that time what did you do?

A The same thing.

Q Where?

A In Arcadia.

(Testimony of Falon E. Kirk)

Q Your old business?

A Yes, sir.

Q You have always been working for yourself, is that it?

A Not always, no.

Q Well, prior to this business of 6 years standing in Arcadia, you were working for yourself in Arcadia?

A Yes, sir.

Q In similar work?

A Yes.

Q All mechanical work?

A All mechanical work.

Q How long were you in that business that time?

A That was about 3 years and a half.

Q How far through school did you go?

A Well, I never finished the public school; I went to private school.

Q Did you go through high school?

A No, I never went to public school or high school; I went to private school.

Q What age were you when you finished going to school?

A Well, I would say definitely when I gave up getting any education I was around 25.

Q Did you ever have occasion to go to sea?

A Why, yes.

Q When?

A Like going fishing, if you call that going to sea; that has been my occasion.

Q I mean, going to sea; have you ever worked as a seaman?

(Testimony of Falon E. Kirk)

A No.

Q And when you refer to going fishing, you mean going on an occasional fishing trip?

A Yes, sir, and up north my brother had a boat, and we used to go fishing up there.

Q Where was that?

A Up in Eureka.

Q Aside from that you have never owned a boat?

A Yes, sir.

Q You bought this boat alone?

A Yes, sir.

Q You bought it from the Kittenberg Boat Works?

A Yes, sir, I ordered it built.

Q They are located at Point Loma, California?

A Yes, sir.

Q Why did you have it built there?

A I heard that they were responsible boat builders.

Q From whom did you hear it?

A From Eric and several people.

Q And you had known Mr. Hogstrom prior to the building of this boat?

A Yes, sir.

Q How long had you known him?

A I would say in the neighborhood of 5 to 7 years.

Q Had it been agreed prior to the building of the boat that you would build it, and he would charter it?

A That was the idea.

Q You were to finance the boat?

A Yes, sir.

Q Did you have any purpose in mind for financing the boat for Mr. Hogstrom on a charter?

(Testimony of Falon E. Kirk)

A For the same reason that anyone would have.

Q Did you have any particular reason in mind?

A Yes.

Q For what?

A To make money.

Q How much did the charter call for?

A \$300 a month.

Q Did he ever pay you any rental for the use of this boat?

A No.

Q At no time? From October up until March he never paid you anything for the use of that boat, did he?

A No, he was never able to.

Q As a matter of fact you had the boat chartered for fishing?

A Yes, sir.

Q And you knew it could not be used for any other business?

A No, I did not know that. I did not understand it that way, anyhow.

Q Why did you have it chartered for fishing?

A I understood it had to be chartered for something, and fishing would be one of the things that would predominate under given circumstances.

Q What do you mean, "given circumstances"?

A If fishing was good.

Q You did not know that it was at the time this boat was obtained?

A No, but I knew that the market was no good.

Q And you never owned a boat prior to this time?

A No.

(Testimony of Falon E. Kirk)

Q Where did you get the money to pay for this \$4.500 construction bill?

A Well, there was mostly my money and partly my wife's.

Q Where did you get the money?

A I made it during the course of business while I was in business.

Q And the balance you obtained from your wife?

A Yes, sir.

Q Did you ever see a fishing boat before?

A I saw several of them.

Q Were any of them ever constructed like this boat?

A Well, I can't say as to that, whether they were or not. They are all similar.

Q Did you ever see a fishing boat constructed similar to the V-293?

A Well, I was out on one last summer that I would say was constructed similar.

Q Do you know what the name of that boat was?

A No, I cannot recall.

Q Do you know where it was you were out in it?

A Yes, sir, off of Formosa.

Q Why did you have a 300 horsepower motor put in this boat?

A Well, speed was one of the features we wanted.

Q For fishing?

A Yes, sir, one of them.

Q What is the necessity of having a speed boat for fishing?

A It wasn't a speed boat necessarily, I don't think.



(Testimony of Falon E. Kirk)

Q A 300 horsepower motor will propel that boat through the water in excess of 20 knots an hour?

A I could not say as to that.

Q Did you ever have it tried out?

A Yes.

Q Where

A After it was finished and up at Pedro.

Q Why did you have it numbered in San Diego?

A Because it was closer to where the boat was built. We were down there quite a bit, and you might say, to kill two birds with one stone we had it numbered there.

Q And you immediately brought it up to San Pedro?

A Yes.

Q And it was never returned to San Diego?

A No.

Q You have never operated the boat?

A No.

Q Do you know how to operate it?

A If she has a motor in it, I can make it run.

Q I am asking you if you can run it.

A The proof of the pudding is in the eating of it, and I think I could run it.

Q Do you know anything about navigation?

A No, not very much.

Q You refer to "we" in your testimony. You stated that "we" had to specify something, with respect to these documents, and so "we" said fishing. To whom do you refer?

A Let me have that question again.

Q You say "we" had to specify something, with respect to this document. Who was the other party?

(Testimony of Falon E. Kirk)

A Hogstrom and myself.

Q You were working together on this enterprise?

A Surely.

Q And did you require any bond or any security from Mr. Hogstrom when you entered into the charter party with him?

A I did not think I would have to have much consideration at first, but looking at it from a business angle I was forced to do that.

Q Where is that bond?

A I believe it is there.

Q You did enter into such an agreement in the form of a bond?

A Yes, sir.

Q Do you have that bond?

(Mr. Yakey handing document to Mr. Chichester).

Q BY MR. CHICHESTER: This appears to be a note dated October 30, 1931. By the way, this was not made out at the time of the charter. This was made out subsequently and dated October 30, 1931, and signed by O. E. Hogstrom, I believe it was, and this note was given to you for \$4,000, a demand note. What was the purpose of this note?

A To protect my interest in the boat.

Q At the time did he have \$4,000?

A No, but at the time I understood he had collateral or something that was worth that much. When you put your name on a note it is legal.

Q What collateral did he have?

A I would say a house.

Q Do you know, not what you think?

(Testimony of Falon E. Kirk)

A Yes.

Q What house did he have?

A He had a house on a double lot in San Pedro.

Q Free of any encumbrances?

A I think it was, but I guess it was not at the time.

Q Who insured this boat?

A I have forgotten the name.

Q It was insured?

A It seems to me it was.

Q Do you recall that definitely?

A Let me see—I don't think there was any insurance on it. There should not be, no, unless Eric took it out.

Q This was your boat in which you invested \$4,500?

A There was no insurance on the boat.

Q Did you ever try to get it insured?

A No, not to my knowledge.

Q Do you know whether Mr. Hogstrom ever did?

A I doubt it.

Q As a matter of fact, no marine or insurance company will carry insurance on a boat of this type, will it?

A I don't know.

Q The charter party says that no insurance on the hull or machinery will be carried by either the owner or the charterer, and you would specify that in lieu of insurance a note of \$4,000 will be deposited, said note to be collectable in the case of total loss of the vessel or in the case of any violation of any condition herein stated, which would prejudice the owner's interest, in an equal amount to the stated value of the vessel. That was your idea of the substitute for insurance. Hence, there would have to be a total loss of that vessel before you could collect anything on that note?

(Testimony of Falon E. Kirk)

MR. YAKEY: We object to that. The instrument speaks for itself.

THE COURT: Yes.

Q BY MR. CHICHESTER: There was no insurance for any damage to any other vessel by your boat?

A I understood that the charter protected me in the case of that.

Q Did you seek any legal advice before you entered into that charter agreement?

A None other than what you might say as you would go to a person in the habit of drawing up such papers and leave it to them to draw it up.

Q Who drew it up?

A I can't think of his name.

Q Was he an attorney?

A I cannot remember his name.

Q Was he an attorney?

A I imagine he was.

Q Well, do you know?

A Yes, sir, he was an attorney.

Q Where was he?

A In San Pedro.

Q Do you know his name?

A Only having seen the man once, I do not believe I can recall his name.

Q And you entered into a charter agreement, had a boat built involving \$4,500 with no insurance and no further protection on your investment other than what was contained in that charter agreement, is that correct?

A Possibly.

Q Did you ever see the boat after you chartered it to Hogstrom?

(Testimony of Falon E. Kirk)

A Several times.

Q Did you ever see any fishing tackle on it?

A Yes.

Q What kind?

A Fishing tackle and poles.

Q Any lines?

A Yes.

Q What kind of lines.

A Well, just the kind like I had myself.

Q Did you ever do any fishing on it?

A Yes.

Q Where?

A Around in San Pedro, in the harbor around there

Q When did you do that fishing?

A Around vacation time last summer.

Q What did you ever catch?

A Mostly barracuda.

Q Did you ever catch fish in commercial quantities?

A I don't know; I never went out commercially.

Q Do you know whether or not Mr. Hogstrom ever did?

A Evidently he did not.

Q BY THE COURT: You mean he told you he did not?

A He told me he went fishing several times, but that the market was wrong, and so forth, and it made it a financial impossibility to do anything with it.

Q You mean that he caught fish?

A That, I could not say. I see what you mean, but I don't know whether he went fishing or not. I just assumed that.

(Testimony of Falon E. Kirk)

Q Just what did he tell you about what he did do?

A Well, that the market was not good for fishing, and he thought it would be inadvisable to do fishing with the boat at the present.

Q When did he tell you that?

A Very shortly after the boat was put in commission.

Q You mean about last October?

A Around about then, I should imagine.

Q And do you mean about October or November of last year he told you that on account of the market conditions he thought it was inadvisable to take the boat out for fishing?

A Yes, sir.

Q How frequently did you see him between October and February?

A Why, we would see each other once or twice, possibly. I could not say definitely. You might say that we were at the opposite ends of the world, because in my business I am held very tight to my business.

Q How long before the boat was seized did you last see Hogstrom?

A I think it was about 15 or 20 days, I would say, along in there, or maybe a little longer, possibly.

Q Where did you see him?

A I saw him down at San Pedro.

Q Was he on the boat?

A No, it was at his house, and then we went out and took a ride on the boat, and I looked the boat over to see if everything was jake.

Q What did you see on the boat at that time?

(Testimony of Falon E. Kirk)

A It was clean. There was nothing on it. It was laid up.

Q Do you mean there was no fishing tackle?

A No, they were having trouble with the motor or something.

Q What, if anything, did he tell you about using the boat to catch fish in commercial quantities?

A He said he thought he might as well give up the idea and see if he couldn't get other work with it.

Q Did you ask him about paying the rental?

A Yes, sir, I asked him about that, but it was just like you could see, that it was no use in annoying the man; he could not pay up.

Q Did he tell you he could not pay the rent?

A He said it was impossible, but that he expected to get work so that he could pay the rental.

Q Did he tell you he had been unable to earn any money by going out to catch fish?

A Not in so many words, but he said in view of the way the market was it was an impossibility to make any money, that there was no use in wasting money in trying to make money when there was no market for it.

Q You mean 15 or 20 days before the boat was seized he paid you no rental?

A No rental.

Q And he told you there was no use in taking the boat out for fishing purposes?

A Practically that.

THE COURT: Any other questions?

(Testimony of Falon E. Kirk)

Q BY MR. CHICHESTER: Did you ever see any fishing equipment he had provided for that boat for commercial fishing purposes?

A Yes, sir, I believe I have, at his house.

Q What kind of equipment was it?

A It seemed to me it was more or less tackle as you would call it.

Q What kind of tackle?

A I would say it was lines with about Number 2 or 3 hooks on them, you know, out on a trolling line.

Q Any nets?

A There was always nets and cork floats around the house where he was.

Q Do you know whether those nets were used on the boat?

A No.

Q Did Mr. Hogstrom ever tell you he had used the boat for commercial fishing?

A I can't directly say that he did.

Q Do you ever remember meeting Mr. McFarland?

A Yes.

Q When was that?

A That was last month.

Q Where was it?

A Out at my place of business.

Q Who was present at that time?

A Myself and partner and Mr. McFarland.

Q Who is your partner out there?

A Mr. Howard.

Q He is now your partner as well?

A He is.



(Testimony of Falon E. Kirk)

Q Did he ask you any questions?

A Yes.

Q What did you answer?

A I told him I had received notice in the mail and through a change in address I just got the notice that the boat had been seized a day previous to that, and that I had not had a chance to make contact with Mr. Hogstrom or anything pertaining to the boat and did not know what it was all about.

Q Did you refuse to make any statement at that time?

A I refused to make a statement, because I did not know—

Q (Interrupting) Did you make a statement that that boat was in a jam, and you were going to make no statement concerning it until you saw Mr. Hogstrom?

A No.

Q Are you positive of that?

A If I did, I did not express it that way.

Q Why did you hesitate about making any statement; if this boat was a legitimate boat to be used in the fishing business, why did you hesitate?

A For the simple reason it would be caution upon any man's part. Why should I go to work and make a statement first without knowing anything about it?

Q Did you have any reason to believe there was anything wrong in the operation of this boat?

A I cannot say that I did.

Q Did you or did you not?

A No, not up to that time.

Q Yet, you were taking a caution against something?

(Testimony of Falon E. Kirk)

A Surely.

Q What was that something?

A I wanted to find out exactly what the charge was. He could very easily tell me one thing, and it could be another thing. I did not know that—

Q (Interrupting) Was there anything for you to conceal?

A Nothing that I know of.

Q Why should you want to refuse to say anything about the boat?

A I did not refuse. I told him I owned the boat; that is what he wanted to know.

Q But you just testified that—

A (Interrupting) He had a stenographer with him, and he wanted to take a sworn statement as to my ownership of the boat.

Q And you refused to give any statement at all?

A No, I did not refuse to give any statement.

Q What did you say?

A I told him I owned the boat.

Q That was all you said.

A No, I think there was a lot of other conversation at the time.

Q With respect to the boat?

A Yes.

Q Do you recall it?

A Not all of it.

Q Well, what was some of it?

A He said he thought the boat was not what it was supposed to be, and so forth.

Q What did you say as to that?

(Testimony of Falon E. Kirk)

A I told him that although I could not swear to it, I thought it was.

Q That it was what?

A What it was supposed to be.

Q What was it supposed to be?

A A fishing boat.

Q BY THE COURT: With whom did you say you had this conversation?

A With Mr. McFarland.

MR. CHICHESTER: He is a Special Customs Agent.

Q BY MR. CHICHESTER: Do you recall the construction of the rear end of this boat with the slide board and the other slides built next to it?

A I do.

Q You had this boat built, I believe you stated, with the Kittenberg Boat Works?

A I did.

Q Did you call for that type of construction on the rear end?

A No, I was more guided by the shipbuilder and Mr. Eric.

Q And Mr. Eric Hogstrom?

A Yes.

Q They gave you that idea?

A Yes.

Q Why did they suggest that type of construction?

A Because it was easier for a dory to get on and off and other things.

Q You used that slide to slide a dory on and off the boat?

A I suppose so.

(Testimony of Falon E. Kirk)

Q Do you remember the construction of the wood there of that slide?

A As I remember that, it was fairly heavy wood.

Q How heavy?

A I suppose an inch plank or something along in there.

Q Have you ever seen it?

A Yes.

Q Did you ever see a boat sliding on or off of that slide board?

A No, I never did.

Q You never saw that?

A No.

Q There are certain stanchions which hold the dory in place?

A Yes.

Q And there is a roller over the end of the boat?

A Yes.

Q Then, why would they want the slide board there if they were going to hold the dory up in these stanchions?

A I don't know.

MR. CHICHESTER: I believe that is all.

#### REDIRECT EXAMINATION

BY MR. YAKEY:

Q You never have had any experience in drawing these charter party contracts; you had never drawn a contract or had a contract drawn for chartering a boat before this contract was drawn?

A No.

Q Who was this party, a Customs House Broker?

A I believe that is what they call him.

(Testimony of Falon E. Kirk)

Q Where?

A At San Pedro.

Q And you had him to draw it?

A Yes.

Q And so far as the wording in that contract was concerned, the wording was put in there by the man who drew the contract?

A That was it.

Q You had known Mr. Hogstrom for some years?

A I have.

Q And you accepted in lieu of any bond his promissory note so that in case there was a loss of the boat that the note would be paid? At whose suggestion was that taken?

A That was just a kind of an idea on my part.

Q You thought that that would give you ample security?

A Yes.

Q Mr. Hogstrom had some property which you knew of?

A Yes.

Q And you felt that you were secure?

A Yes.

Q A man by the name of Wickersham drew that contract for you and Mr. Hogstrom?

A I don't really remember the name so much.

Q At the time that you were interviewed by Mr. McFarland you told him you owned the boat?

A I did.

Q And he wanted you to make a sworn statement?

A Yes.

(Testimony of Falon E. Kirk)

Q Did you give him any reason for not making it at that time?

A Yes, I did.

Q What did you tell him?

A I told him I just got a letter through the mail telling me that the boat had been confiscated, or whatever you call it, and I didn't know enough about the case then to give him a sworn statement.

Q Had you consulted any attorney up to that time?

A No.

Q Or any counsel of any kind?

A No.

Q The boat after it was constructed and taken over by Captain Hogstrom under the charter was not in very good condition so far as its motors were concerned?

A No, the motor was a lemon.

Q It never did operate very well?

A Well, it had its moments.

Q And you knew, and Captain Hogstrom told you, did he not, that he had an opportunity to do some work for the moving picture people at different times, and he thought it would be better to put it in that kind of service than to do fishing?

A Yes, sir, I was very much in favor of that.

Q In your application for award of a local identification number you gave as the principal occupation of the boat, for fishing. Did you understand at that time that it would be limited, that you would not be allowed to do anything with it except to fish?

MR. CHICHESTER: That is objected to as immaterial. A man is presumed to know the law. The law

(Testimony of Falon E. Kirk)

is conclusive, and the purposes for which a boat may be licensed or documented are well defined, and anyone who has an investment of this amount should take care of it by finding out what he can or what he cannot have the boat licensed for.

THE COURT: Well, we will let him answer it.

A What was the question?

(Question read by the reporter.)

A No, I did not understand that. I did not understand that you would not be allowed to do anything except fishing.

Q BY MR. YAKEY: As a matter of fact, you knew that the boat did do a little work for the Paramount Picture people, a day or two at a time?

A Yes, I did.

MR. YAKEY: That is all.

#### RE CROSS EXAMINATION

BY MR. CHICHESTER:

Q When you purchased that boat from the Kittenberg Boat Works, did you pay for it in cash?

A No, I did not pay them cash in full; it was paid as the boat was constructed.

Q Who paid?

A I did.

Q By what means; did you use checks or cash?

A Some checks and some cash.

Q Have you any of those cancelled checks?

A No. I do not believe they will show as cancelled checks. They were cashiers' checks.

Q And the balance was paid in cash?

A Some cash sometimes.

(Testimony of Falon E. Kirk)

Q What was the amount of the final payment?

A It seems to me it was around \$900.

Q Do you recall what the other payments were?

A They would vary so much that I could not specify just what they would be.

Q How long did they take to build the boat?

A It seems to me it took along about a couple of months.

Q That was started in March of 1931? A What is that?

Q That would make it around June or July when it was completed?

A Along in there.

Q And you did not obtain any kind of a license until October of 1931, did you?

A I am not clear on the dates, to be frank with you.

Q What did you do in the meantime, between the date of the completion of the boat and the date you obtained a license?

A As I recall it, the license was obtained before the boat was completed. It was practically completed, you know. It all came along about the same time. My memory for dates is very poor.

Q The date of the licensing of the vessel is the 14th of October of 1931?

A Yes.

Q I believe you testified that it was built, that the building was started in March of 1931, didn't you?

A I believe it was.



(Testimony of Falon E. Kirk)

Q If they took a month to build it, certainly something was done with the boat between March and April or May, 1931, and the date it was completed.

A Well, the license was taken out before it was finally completed. It was all ready for inspection. It seems it has to have an inspection before it can be turned loose, and to get that license you have to have the boat approximately finished.

Q Then, it took from March until October to build that boat?

A There was a great deal of trouble with the motor.

MR. CHICHESTER: That is all.

#### REDIRECT EXAMINATION

BY MR. YAKEY:

Q The fact of the matter is the motor had to be rebuilt?

A It did.

Q It had to be rebuilt here and then sent down and put in?

A Yes.

Q When you say it took you two months or three months to build the boat, you meant the building of the hull?

A Surely.

Q And the machinery wasn't put in, was it, so that it would work and stand inspection, so that you could get your award of identification number until the time it was issued in October?

A Yes, that was it.

MR. YAKEY: That is all.

MR. CHICHESTER: That is all.

THE COURT: Recess until 2 o'clock.

(Whereupon a recess was taken until the hour of 2:00 o'clock P. M. of the Same day.)

(Testimony of Eric Hogstrom)

LOS ANGELES, CALIFORNIA, MONDAY,  
MAY 16, 1932.

2:00 O'clock P. M.

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THE COURT: Proceed with the case on trial.

MR. YAKEY: I will call Mr. Hogstrom.

ERIC HOGSTROM,

called as a witness on behalf of the claimants, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YAKEY:

Q You are one of the respondents or the claimants in this case?

A Yes, sir.

Q And you remember the boat on the date it was seized; that is, you remember the occasion?

A The 3rd of March.

Q And at that time were you in charge of the boat?

A Yes, sir.

Q How long had you been in charge of the boat prior to that time?

A Since she was built.

Q And you had it under charter from the owner, Mr. Kirk?

A Yes, sir.

Q He is the other respondent in this case?

A Yes, sir.

Q Do you remember where the boat was built?

A She was built down in San Diego at Kittenberg's Boat Works.

(Testimony of Eric Hogstrom)

Q For what purpose was she built?

A Well, for fishing and moving picture work, but principally for fishing, but if the fishing wasn't any good, I could go to work with it for moving picture work, party boat, and sport fishermen.

Q Did you do any fishing with her?

A Well, I tried to, but I couldn't get any fish.

Q When did you take charge of the boat?

A I took charge of the boat when she was finished in October, I think it was.

Q Did you have any trouble with the boat, that is, with her machinery after receiving charge of it?

A Yes, sir, we had considerable trouble with the motor.

Q She wasn't in good condition to operate normally?

A No, she wasn't.

Q On the day on which this boat was seized, where were you bound?

A I was bound for Santa Cruz Island.

Q Who was with you?

A A fellow by the name of Johnston.

Q Where were you going, to what part of Santa Cruz Island?

A I was going to Couches—canyon of the pigs, in English.

Q What is located there?

A A man and wife who have been fishing there for the last, I would say, about 9 years now.

Q What is their name?

A Mr. and Mrs. Englund.

Q Have you been there before?

(Testimony of Eric Hogstrom)

A Several times.

Q Were you on friendly relations with the Englund family?

A Yes, sir.

Q And on the day in question what did you have, or have you a list of what you had on board the boat in the way of food and provisions?

A I have.

Q Have you got that with you?

MR. CHICHESTER: I don't know whether there is any question concerning this list and the list in evidence. Has counsel inspected the other list? If so, I have no objection to it.

MR. YAKEY: I think it would be proper to admit it, if his testimony is that this is what he had.

THE COURT: You may proceed.

(Counsel handing document to witness.)

THE WITNESS: Correct.

Q BY MR. YAKEY: Is that the list?

A That is the one.

Q Does that contain a full list of all the food and provisions that you had on the boat at that time?

A Everything.

Q When was this purchased?

A The day before I went out I called up an order the night before I went out.

Q And the bill was purchased at the market named on the bill?

A Yes, and that is the prices.

Q And the price paid for it is correctly marked on the bill?

(Testimony of Eric Hogstrom)

A Yes.

MR. YAKKEY: We offer this in evidence, your Honor, as a part of the testimony of the claimants.

MR. CHICHESTER: No objection.

THE COURT: The same will be marked Respondents' Exhibit C.

(Respondents' Exhibit C).

Q BY MR. YAKKEY: In addition to that, you had some water on the boat?

A Yes, sir.

Q How many gallons?

A 50 gallons.

Q Did this boat have any fresh water on board?

A No, no fresh water tanks.

Q And the water you had on board was for what purpose?

A Some for my own purpose and some for the people on the island. I usually take some fresh water over there to them, because the water there is a kind of brackish; you can't wash your hair in it; you can't cook beans or peas in it, so I was bringing some to them.

Q When you say "the people on the island" you mean the family of Englund?

A Yes, sir.

Q And your going to the island was for what purpose?

A Just to go over there to do a little hunting, a little vacation; I wasn't working.

Q Where were you to stop when you went there?

A I stopped in the camp.

Q And that is the Englund camp?

A Yes, sir.

(Testimony of Eric Hogstrom)

Q For what purpose were you taking these provisions that were aboard the boat?

A Well, you see, whenever I go over there I usually take some groceries with me. When the crawfish season is over—because they only have to depend on boats coming over there out of season. There is no communication at all between the island where they are and the mainland, so it is customary for any boat that goes over there to take fresh water and a little provisions with them and just give them to them as an accommodation.

Q Those provisions that you were taking were to be for your own and your companion's consumption and the consumption of the family that was there that you were visiting, is that correct?

A Yes, sir.

Q They were taken over there to be used while you were there, and what was to be done with the remainder? They were to be given to the Englund family?

A Yes.

Q And any charges made to them for the goods?

A Nothing.

Q Any charges made for carrying the goods there?

A Not a thing.

Q How long did you contemplate at that time remaining there?

A Oh, about 10 or 12 days.

Q And during that time the provisions that you were taking were to be used for the sustenance of yourself and the Englund people and whoever might happen to be there?

(Testimony of Eric Hogstrom)

A Yes, sir, it is customary to do that. There is a camp about 8 miles above, and there is another camp approximately 5 miles below, and they often visit each other, and when they do, they eat together.

Q There is no regular line of boats running between the mainland and Santa Cruz Island?

A No regular lines.

Q During the fishing season up there, that is during what month?

A The fishing season is from the 1st of April to the 15th of October, that is, the lobster fishing.

Q At that time and at the time that you went there the lobster fishing season was not on, was it, at the time your boat was seized?

A No, sir.

Q And during the time that the fishing season is on how are supplies obtained by the people on the island?

A Well, they have a tender, a man in the fishing market in Santa Barbara, the Largo Fishing Company who have leased the island from Mr. Kerr, who owned the island, and the fishermen have camps around the island, five or six fishing for him, so they have to sell the fish to him, and when they go out and get the fish in they usually bring groceries that the campers order once a week.

Q During the closed season, how do the people get their groceries over there?

A Mrs. Englund usually goes into Santa Barbara when there is a boat in the harbor there, goes in with it, and brings out the groceries; no set time; they do not

(Testimony of Eric Hogstrom)

know when the boat is going to come there; just take chances on a boat coming in.

Q How long have you been familiar with Santa Cruz Island and the manner of doing business there?

A I fished on the island six years ago the first time and about two and a half to three years the second time. The first time I fished on Santa Cruz at Yellow Banks, and the second time I fished on the Capa for Mr. Largo.

Q Are you familiar with the custom and manner in which the people get their provisions there during the closed season; in other words, is it not the custom that anybody going there, the people that live on the island if they want anything in the way of provisions that are not there, that anybody that is going to the mainland will get them and take them over to them simply as a neighborly or friendly act and no charges are made by anybody for doing that?

A Any fishing boat going over there always brings groceries as an accommodation for the people on the island.

Q At the time you took these there was no expectation or contract whereby you would receive anything for your services at all?

A None whatever.

Q With regard to the water tanks for the boat, it had none on it?

A No, no water tanks.

Q What would be the capacity of the ordinary water tank for a boat of that size?

A Oh, 50 or 60 gallons.



(Testimony of Eric Hogstrom)

Q I will show you Respondents' Exhibit A and ask you if you have ever seen that letter before? (Handing document to witness).

A Yes.

Q And when did you receive it? First, did you receive that letter?

A My wife received it. She always writes in her name. She always addresses her mail to my wife.

Q When was that received, about the date on the letter?

A Oh, a couple or three days before they seized the boat, I think.

Q Before the boat was seized?

A Yes.

Q Had you ever received any other letters from Mrs. Englund?

A Oh, yes, we received scores of letters.

Q In other words, was there a regular correspondence between your wife and Mrs. Englund?

A There was, yes.

Q In the construction of this boat, you heard the testimony there, that there were skid boards or whatever you call them on the stern of the boat?

A Yes, sir.

Q What were they there for, put on for?

A I had no power hoist on board for hoisting anything, and the deck is about 3 feet below the hatch combing and if there is anything heavy to be loaded on board, to get over the side, you have to slide it down; you can't drop it into the cockpit; you have to slid it on so it won't break up things.

(Testimony of Eric Hogstrom)

Q Have you used it for that purpose on this particular boat?

A Yes, sir, I used it when I was working for the moving picture corporation, the Paramount.

Q For what purposes did you use it?

A We had a generator that we slid down on it, to drive the electric lights generators to produce power for the electric lights.

Q What else would go down there?

A A little Ford motor; it wasn't very heavy. I guess it would be a thousand pounds or twelve hundred pounds.

Q What was the skid board made out of, what kind of wood?

A Plywood, about an inch thick; four ply wood; I think it was four or three ply; I don't remember now.

Q It had sufficient strength, did it not, to take on an ordinary small boat or tender or the launch?

A Oh, there is a lot of strength in that wood.

Q In the construction of this boat, she was—I don't know whether I have asked you that question or not—it was constructed not only for fishing, but in case that fishing did not pay, it could be used as a general utility boat?

A Yes, exactly.

Q Or for miscellaneous work. How many months in the year can a boat of that class be used along the coast for fishing exclusively?

A Well, in the summertime the barracuda runs and the mackerel runs, oh, about 3 or 4 months.

(Testimony of Eric Hogstrom)

Q And in the winter time?

A Well, in the winter time there isn't much fishing, because these big fishing boats, they go away down into Mexico; they are big fishing boats, big purse seiners.

Q During the time that you have had charge of this boat you did use her to some extent with the moving picture people, did you not?

A Yes, I did.

Q Has anybody ever stopped you or was the boat ever seized during that kind of work?

A No, sir.

Q Do you know approximately what the groceries that were on board that boat at that time would weigh, exclusive of the water?

A No, I could not tell as to the weight. We were not in the habit of weighing the groceries. We just ordered a few groceries; I don't know how much they weighed.

Q It would not be more than a half a ton all told?

A I don't think that much. Well, I really don't know what they would weigh, but I don't think it would weigh half a ton. That is one thing that we never weighed, any groceries.

Q About what time in the morning was it that you started out of San Pedro Harbor?

A Just about daybreak.

Q And you went out. Just explain to the Court how you went out, the course that you took.

A Well, I did not set any course at all. Leaving the breakwater, I wanted to get out far enough so I could clear—there was always a lot of driftwood next to the

(Testimony of Eric Hogstrom)

beach there, and there is an old buoy there. I do not think there is a light on it yet; I am not sure. And when I go to Santa Cruz, I usually steer out a little, say, a quarter of a mile, and then a course straight out south or south by west, over southwest, either course, until I think I am far enough out, and then I set my course for Santa Cruz Island, which is north and a half south or west a half south.

Q And at the time that your boat was seized, what course were you pursuing?

A Well, I didn't—I had no course set. I was going to set my course after I changed from that position to miss the buoy. I guess I was doing about west southwest.

Q There is a buoy out there, is there?

A Just about a quarter of a mile off of Point Firmin.

Q And in going to Santa Cruz, as I understand you, you were going out beyond the buoy and then from that point set your course for your final destination at Santa Cruz Island?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q And the boat was seized before you had accomplished this, is that true?

A Yes, sir.

Q If you had gone directly on in the course in which you were steering at the time that you were picked up, where would you have landed with reference to Catalina Island?

(Testimony of Eric Hogstrom)

A Oh, I guess I would have landed pretty close to the north end of the island, or west end rather, you call it.

Q Now, in going to San Clemente Island what would be the course that you would have taken in going out of the harbor?

A San Clemente?

Q Yes, sir, with reference to the course that you were pursuing at the time.

A If you will let me look at the chart, I can tell you. Can I look at the chart?

Q Yes, just step over to the chart.

(Witness at chart on blackboard).

THE WITNESS: You said Clemente, didn't you?

Q Yes.

A Well, here is Point Firmin light, (Indicating), and here is the breakwater light. (Indicating). You set a course right from there, well, about south three-quarters east. The course from San Pedro lighthouse to the east end of San Clemente Island.

Q You have sailed up and down that coast?

A Yes, sir, I have been fishing on the coast.

Q Have you ever fished at San Clemente?

A Yes, sir, I have.

Q In going from San Pedro to San Clemente, do you go to the westward or around the north end of Catalina Island and down that side or do you go between Catalina Island and the mainland?

A It all depends. You said if I want to go to the south end of Clemente? No, I go as a straight course from San Pedro breakwater to the east end of San Clemente Island. That would be putting you out of your

(Testimony of Eric Hogstrom)

way by going to the north of Catalina. You go like this: instead of going direct you can make a straight course for Clemente Island.

Q What course do the ordinary ships running up and down the coast take? Do they go around the north end of Catalina or do they go between Catalina and the mainland?

MR. CHICHESTER: Objected to unless the witness is qualified to testify as to the ordinary course that ships follow.

THE COURT: Well, we will let him answer.

Q BY THE COURT: Do you know the course usually followed by boats running from the breakwater to San Clemente Island?

A Yes, sir, I do.

MR. YAKEY: May I interrupt?

Q BY MR. YAKEY: You don't mean to give the exact figures in degrees. I want to know whether they go inside between the mainland and Catalina or whether they go around Catalina Island on the outside.

A Well, between Clemente and the mainland lies Catalina. You will have to pass Catalina to go to Clemente. If you want to go to the south end of Clemente or the east end, like we call it, you have to go to the east end of Catalina, the shortest route. If you want to go the other way, you just steer the opposite.

Q BY THE COURT: Well, do the boats sometimes in traveling from the breakwater to San Clemente Island go around Catalina Island?

A Yes, sir, they do; if there is any prospect of fish, they do.

(Testimony of Eric Hogstrom)

Q BY MR. YAKY: Suppose there is no prospect of fish down there, how would they go?

A You don't know that until you come on the fishing grounds whether there is any fish or not.

Q It is according to what fishing ground you want to reach, is it not?

A Yes.

Q After your boat had been seized you had some conversation with several officers of the Government, did you not?

A Yes.

Q The man who went aboard the boat—do you remember what his name was?

A No, I do not. I did not ask his name, and he did not tell me his name.

Q BY THE COURT: Do you remember speaking to one of the Coast Guard officers who testified here on the stand, a man named Megos?

A Yes, I was speaking to the Captain; I was talking to him; he was hollering at me at a distance. We had to holler at each other at a distance; we could hardly hear each other. The engines were going, and it was a little off between the boats.

Q At the time that you were seized, did you tell him that you were on your way to San Clemente Island?

A No.

Q What did you tell him?

A I told him I was going to Santa Cruz Island.

Q Had you any intention at the time that you left the harbor at San Pedro, at the time you left the docks, any intention of going to San Clemente at all?

(Testimony of Eric Hogstrom)

A No, sir.

Q And you left the dock to go to Santa Cruz Island and Santa Cruz Island only?

A Yes, sir.

Q At any time in this conversation did you advise the party to whom you were talking that the goods that were on there were being taken over to the island to be used there at Santa Cruz Island?

A Well, he never asked me anything like that. He said, "You will have to wait awhile until I telegraph the Base, until I see what they are going to do with you." He said, "We think they are going to pull in your boat."

Q Did he ask for a list of the groceries that you had on board?

A They had a list on the Coast Guard boat.

Q Did you give him a list?

A I did not have a list on me; at least, I could not find it then.

Q Did you give him a statement from memory?

A Yes, sir, he saw it there; he went over everything and saw everything that was there.

Q You showed him everything that was there?

A Yes, sir, and he saw everything.

Q What was said at that time, if anything, as to why he wanted to check over the list?

A Well, the captain of the Coast Guard, he called his man that was on board searching my boat, and he called him over, and he said, "Here, take this list and compare it with the groceries which he has on board," which he did, and he hollered back to him and he said, "They have some groceries on board, but it isn't anything like this



(Testimony of Eric Hogstrom)

list; there is just about one-third of what he has on the list; some it compared with it," he said. Naturally, a bag of potatoes compared with another bag of potatoes.

MR. YAKEY: You may cross examine.

### CROSS EXAMINATION

BY MR. CHICHESTER:

Q How long have you been in the fishing business?

A About 15 years.

Q Where did you first do your fishing, what part of the country?

A Down in Mexico, on the Vispor.

Q How long have you known Mr. Kirk?

A 5 or 6 years.

Q When was it that you and he got together for the purpose of getting this boat?

A If I remember, it was over in Redondo.

Q When was it?

A About 5 or 6 years ago.

Q About 5 or 6 years ago?

A Yes, when I got acquainted with him, yes.

Q What did you do with respect to getting a boat such as this at that time?

A Oh, we talked about fishing boats, and he said he had a little ready cash lying, but that that was forgotten for the time, at the time I met him.

Q Did you get the boat then?

A No, not at the time I met him; that was 5 or 6 years ago I met Kirk.

Q When did you prepare to get this boat?

A About the last of March, of last March.

(Testimony of Eric Hogstrom)

Q Did you order the boat to be built by the Kittenberg Boat Works?

A Yes, sir.

Q You put in the order yourself?

A No, I did not put in the order; I was supervising the job.

Q For whom?

A For Mr. Kirk.

Q Was he present at the time it was being built at all?

A Yes, he was there a couple of times.

Q How often was he down there?

A I don't know.

Q Was he there more than twice?

A I don't know; I wasn't there all the time.

Q It took a period from March until October to complete the building of that boat after the motor had been torn down a couple of times?

A That was an old second hand motor.

Q It took from March until October to complete the building of that boat?

A Yes, sir.

Q And you were at the boat works during the period of the building of that boat?

A I lived at San Pedro, and I used to go down there.

Q And the boat was being built at Point Loma, just outside of San Diego?

A Yes.

(Testimony of Eric Hogstrom)

Q How did you go down there?

A In a car.

Q Did you put any money into the building of this boat?

A No.

Q Not any?

A No.

Q You entered into a charter party with Mr. Kirk, I believe?

A Yes, sir.

Q Did you ever pay him any part of the \$300 rental called for in that charter party?

A I could not make any money; I could not pay him.

Q When was it you first agreed to charter the boat from him?

A That was when the boat was completed.

Q Where did you make this agreement?

A Down at San Pedro at Howard Wickersham's office.

Q Who else was present?

A There was nobody present but him and me, Kirk and me.

Q Just the two of you?

A Yes.

Q No one else in Mr. Wickersham's office?

A He was there himself.

Q Who drew up the contract?

A Mr. Wickersham.

Q What kind of fishing did you intend to do with this boat when you obtained the document for fishing?

(Testimony of Eric Hogstrom)

A I was intending to setline and swordfishing, commercial fishing.

A Did you do any of that kind of fishing?

A Yes, I tried, but I had no luck.

Q Swordfishing and what?

A Not swordfishing, but rock cod and sardines.

Q How much fish would you have to catch to make it a good paying proposition commercially?

A Swordfishing pays pretty good if you can go out and catch five or six big swordfish that weigh all the way from 500 to 800 pounds.

Q What will that pay you?

A 24 cents a pound.

Q Did you ever do that?

A I tried to.

Q Did you ever do it?

A No.

Q What sort of tackle would you use to catch a swordfish weighing 500 to 800 pounds?

A You use a spear with a line attached to the spear. There is a ball with a rod in it that goes into an arrow spear, and you throw it down, and it gets into the fish, and you throw it down, and the rod comes out of the spear, and the line is attached to it, and it opens up, and you haul in the line.

Q Did you have any such tackle on the boat when it was seized?

A No, we took it off at the time we went to the island with the groceries.

Q Where is that tackle now?

A Home in my garage.

(Testimony of Eric Hogstrom)

Q You at no time made any money using the V-293 in the fishing business?

A No.

Q Such work as you had it employed for was in the moving picture business?

A Yes.

Q And that was only for a few days, wasn't it?

A Well, it was, I think, about 8 days; I think it was 8 days.

Q Did you have any other source of income other than what you obtained from the use of this boat?

A No.

Q Where did you obtain the money to buy these groceries which you listed as having been purchased from the market?

A I still owe for them; I never paid for them.

Q Where did you get the money to pay for the load of gasoline that the V-293 had?

A I didn't even pay for that.

Q You had operated this boat on a number of occasions prior to this particular time it was seized for moving picture work. How did you get the money to pay for the gasoline you used?

A They paid for the gasoline; expenses all paid.

Q You never have used that boat other than on those occasions, is that correct?

A No, that is all.

Q That is the only time you ever used it?

A For making money purposes?

Q Did you ever use it for any other purpose?

(Testimony of Eric Hogstrom)

A Oh, yes, I would run around the bay with it. I had a lot of trouble with the motor, and every time I made a couple or three hundred dollars in the pictures I had to spend it on the motor and the clutch.

Q Where did you obtain the money to buy your gasoline for the 300 horsepower motor which was installed in this boat?

A I made a little money in the movies.

Q That was the only source of income that you had?

A Yes.

Q Do you recall February 28th when you were boarded by the boatswain Lundberg, on February 28th, and there was a Mr. Johnston and another man aboard the vessel; do you recall that occasion?

A I did not know who he was; I remember he was a coast guard.

Q They did board your vessel?

A Yes, sir.

Q Where had you been on that occasion?

A We were out on a trial trip, to try the motor out. That is why I had these men on board. He was a first class engineer and we ran around the gambling ships out there and I tested the motor and came back.

Q On this particular occasion, on the morning of March 3rd, which officer boarded your vessel?

A I don't know his name.

Q Didn't you say to him that you were going to San Clemente?

A You mean when I was seized?

Q Yes, sir, the first time you were questioned concerning your destination?

(Testimony of Eric Hogstrom)

A No, I don't think I did. I said I was going to Santa Cruz Island?

Q Are you sure you did not say that?

A No, I did not say that.

Q Had you ever seen this chart before (indicating chart on blackboard)?

A This chart here?

Q Yes.

A I do not remember. They are all alike.

Q Did you have a chart on the boat?

A Yes, sir, we have charts on the boat.

Q Was it like that one?

A I don't know if it was that one. We buy them.

Q Did you buy that one?

A It has no special markings. I don't know that it was mine.

THE COURT: Q. Did you have one that resembled this chart?

A Oh yes.

MR. CHICHESTER: Q You stated that you were going out there to Pig Canyon and you had not been working prior to that time for quite some period, doing any work?

A The last time I worked was for the movies.

Q How long before?

A Well, I don't recollect exactly how long before.

Q A week or a month?

A That was the first job I had with the movies since I took charge of the boat.

Q That was the first money you made?

A Yes, sir.

(Testimony of Eric Hogstrom)

Q How much money was that?

A I don't recollect now. I had the checks for it. I think it was about two or three or four or five hundred dollars, about five hundred or five hundred fifty dollars—five hundred and fifty dollars.

Q And you were going on this trip to hunt and for a vacation?

A Yes, sir.

Q How long prior to this time had it been that you had been to this island?

A Oh, I think it was two years.

Q You had not been out there for two years?

A No.

Q You had not seen Englunds for two years?

A Yes, sir, I had seen them.

Q Did they know you were coming on this trip?

A No, they did not know I was coming.

Q Did your wife know you were going on this trip?

A Yes, sir, she knew I was going to the island, but she did not know whether I was going that morning or the next day.

Q You did not tell her when you were coming?

A I never tell my wife exactly everything.

Q You did not tell her where you were going?

A Not every time.

Q You were going to be gone for approximately two weeks and yet you did not tell anybody about the destination or how long you would be away?

A There was no occasion to tell anybody.

Q Why did you take Mr. Larsen along? What was the name of the man with you, Larsen?



(Testimony of Eric Hogstrom)

A No, his name was Johnson.

Q I will show you a picture and ask you if that is Mr. Johnson? (Handing photograph to witness.)

A That is Mr. Johnston.

Q Bearing the name "Anderson". Do you know whether he also uses the name of Anderson?

A I don't know.

Q Was he going on a vacation too?

A He was going along with me, yes, sir.

Q Just on a vacation?

A Well, it takes two men to run a boat.

Q What kind of tobacco did you take along on that trip?

A I do not recollect exactly what kind it was.

Q What kind do you smoke?

A Me? I smoke Edgeworth.

Q Any other kind?

A Yes, sir, I smoke any kind myself, Prince Albert, Lucky Strikes.

Q For whom were you taking that tobacco?

A I was taking it over to the island for my own purposes and the people over there.

Q Did you think that ten pounds of tobacco was enough to last you for twelve days?

A Well, as I stated before, those people can't get to the mainland every week.

Q You stated that these supplies were brought to that island ordinarily by the Largo people; is that correct?

A During the season.

Q During what season?

A During the crawfish season.

(Testimony of Eric Hogstrom)

Q You stated the fishing season was from April 1st to October 1st.

A The 15th.

Q October 15th, and this was in March. This was just prior to the opening of the season?

A From the 15th of October until the 1st of April is the crawfish season.

Q Then the season was still on, this was March 3rd?

A No, the season was over when I was going to go over there.

Q But it was March 3rd you were going over?

A No, no.

Q That is the date you were seized?

A March 3rd?

Q Yes.

A No, it was not.

THE COURT: Q What date was your boat seized?

A I am getting all mixed up here now. Was it March? I don't recollect now when it was seized.

THE COURT: Q When do you say is the crawfish season over at the island?

A From the 15th of October until the 1st of April, I think it is; I am not sure.

THE COURT: Q And during that season there is usually a boat from the mainland to the island once a week?

A Yes, sir.

Q Bringing provisions?

A Yes.

MR. CHICHESTER: Q At the time you went back to your house with Mr. McFarland and Mr. Fletcher,

(Testimony of Eric Hogstrom)

your wife was very much surprised to see you there with these men, was she not?

A I didn't notice anything peculiar about it.

Q She had your dinner there waiting for you, didn't she?

A No.

Q You are sure of that?

A Yes, sir, I am sure of that.

Q She did not know where you were going?

A She was eating her dinner or had her dinner when we got up there.

Q She stated that she had your dinner ready for you, didn't she?

A I don't think she did.

Q You are not sure about it?

A Yes, sir, she did not.

Q Referring now to the construction of that boat, you said that skid-board was for the purpose of removing the dory?

A And loading things I needed for the moving picture work.

Q When you built that boat, did you have any idea you were going to use it in the moving picture work?

A Yes, sir, I had communications with the man who had the making of the negotiations with the people that hired me.

Q Who were they?

A Mr. Buck McGowan and M. P. Wilson.

Q Where are they now?

A They are located at the West Basin Yacht Anchorage.

(Testimony of Eric Hogstrom)

Q They are not in court, are they?

A Yes, sir, I saw Mr. Buck McGowan here today.

Q And you had that boat built with the idea of using it in the moving picture business?

A If the fishing was no good.

Q What other purpose could it be used for except fishing?

A For a party boat and taking people over to the Island.

Q What would be the use of that skid-board in taking people over to the Island?

A When we load a life-boat, it stands on that. It stands side-ways or length-wise in the cock-pit, this way. (indicating), and it is good for sliding the boat on and off.

Q What would you want to get it off for?

A You have to get it into the water some-times.

Q You fish from the big boat?

A Yes.

Q What do you carry the dory for?

A For a life-boat.

Q Where did you keep it?

A In the cockpit.

Q Why did you have the stanchions that hold it over the cockpit?

A If the moving picture who hired me—if I would have things in the cockpit I could not put the dory in.

Q Didn't you tell Mr. McFarland that that skid-board was to keep the fish in the boat?

A I don't recollect saying that, sir.

Q Do you recall, also, that there is a skid-board here and also two side chutes, as well, built into that part; isn't

(Testimony of Eric Hogstrom)

that correct? (indicating diagram or sketch on black-board).

A Yes.

Q What is the purpose of those two side-boards?

A Those are deck supports from the cock-pit, up underneath the deck.

Q What is the weight of those boards?

A It is plenty strong enough so it won't knock the pieces off when you take in a piece of machinery out of the cock-pit.

Q Then, from March 1st to April 1st, the fishing season was on and the Largo boat was able to carry food and foodstuff to the Island?

A During that time that I was going out there the fishing season was over; I know that.

Q How do you know that?

A I seen some fishermen going into Pedro with their last catch.

Q You were going out there to hunt these pigs on the Island?

A Oh, we kill a sheep once in a while, too.

Q And you weren't going to stay in the one location on the Island?

A Oh, we usually get in the boat and go out and do a little fishing.

Q Then you go from ranch to ranch around the Island?

A There is no ranch on the coast; it is on top of the hills.

Q I believe you said you were going to see the Eng-lunds and then one or two other places?

(Testimony of Eric Hogstrom)

A That was the fishing camps.

Q Did you have any guns along to do any hunting?

A No, Mr. Englund always has guns and ammunition over there.

Q But he did not know you were coming over?

A No, but he is always there when I go over there.

Q And you had no fishing tackle?

A No.

Q How were you going to fish?

A Oh, he has plenty of gear on the Island.

Q You obtained a California fish and game license, didn't you?

A Yes, sir.

Q When did you obtain that?

A Well, I really don't know the exact date.

Q Why did you obtain it?

A You have to have a fishing license when you want to go fishing.

Q But you never did any actual fishing?

A But if I was going out doing fishing with no license, I was entitled to a fine.

Q Unless you were doing private fishing, sport fishing?

A Then you would have to have a license, too.

Q When you left San Pedro with this cargo of goods, instead of taking the cargo from San Pedro why didn't you take it from Santa Barbara?

A I had no credit in Santa Barbara and up at Santa Barbara is a long way up.

Q What was the speed of this boat?

A I don't know—about 20 or 25 miles.

(Testimony of Eric Hogstrom)

Q 20 or 25 miles an hour?

A Yes, sir.

Q Isn't that a pretty fast boat for a fishing boat?

A No, I don't think so. You can build them as fishing boats with a lot more.

Q Do you know of any other fishing boats down in the harbor that travel that fast?

A No, I do not.

Q You were taking this 50 gallons of fresh water along to the Island?

A Yes, sir.

Q There was plenty of fresh water on the Island?

A Yes, sir, a kind of fresh water, but it is a kind of brackish.

Q Do people live there all the time?

A Yes, but they bring the water from the mainland whenever they have a chance, like I told you.

Q You were taking this water out to cook peas and beans?

A Well, to use in camp.

Q But you stated on direct examination that you were taking the water out to cook beans and peas and to wash hair, isn't that correct?

A I said you can't wash your hair with the water they have on the Island and you cannot cook peas and beans in it, and you always get the fresh water from the fishermen, if there are any around there. I have done it myself. I have gone out and bummed water and even groceries. Every fisherman that goes out there always takes water and groceries.

(Testimony of Mrs. Belle Hogstrom)

Q Then these people from April to October are always without fresh water unless they get it from the mainland on a special trip?

A They have drinking water but they always try to get the fresh water whenever they can.

Q There are springs around the Island?

A But it is all the same water, a kind of brackish.

Q What is that?

A A kind of alkaline or salty.

MR. CHICHESTER: I believe that is all.

THE COURT: Any redirect examination?

#### REDIRECT EXAMINATION

BY MR. YAKEY:

Q Just a question. At the Englund camp out there they have a tank there, have they not, for the purpose of storing fresh water that they get from the boats that come in?

A Oh yes.

MR. YAKEY: I think that is all.

THE COURT: That is all.

(Witness excused.)

MRS. BELLE HOGSTROM,

a witness called and sworn on behalf of the Claimants,  
testified as follows:

#### DIRECT EXAMINATION

BY MR. YAKEY:

Q Mrs. Hogstrom, you are the wife of Captain Hogstrom who just left the stand?

A I am.



(Testimony of Mrs. Belle Hogstrom)

Q Do you remember the day upon which the boat, V-293, the boat that Mr. Hogstrom was using, was seized?

A I do.

Q Do you remember the incident of the officers coming to your house in the evening?

A I do.

Q And at the time that they came in was Captain Hogstrom with them?

A Yes.

Q Do you remember the conversation you had with them there at that time?

A Yes, I do.

Q Just state what conversation you did have with them there at that time.

A Do you want me to give it in my own words?

THE COURT: Yes.

THE WITNESS: A They asked me if I knew where my husband was going and I said at first, I said "No," because I did not know what to think of them coming in with him and I thought something terrible had happened; it frightened me; I thought he had a wreck or an accident of some kind and I was flustered a little at first, but when I saw it was all right and I thought there was nothing wrong, it seems as though I gained my composure and then I answered what questions they asked me, and they asked me if I had a letter, or my husband spoke first and asked me to get that letter I had from Ray, and I said "Which one?", and he said, "That last one you got," and I did; I went and brought the letter in and they read it.

(Testimony of Mrs. Belle Hogstrom)

MR. YAKEY: Q Is this the letter? (Handing document to witness.)

THE COURT: Respondents' exhibit A.

A Yes, sir, this is the one.

MR. YAKEY: Q And did you show it to him?

A I did.

Q Did he read it?

A Yes, sir, both officers read it.

Q What conversation, if any, did you have with regard to the dinner?

A My husband asked me for a drink of milk or a glass of milk and I said, "Haven't you had any dinner?", and I said, "There is dinner just ready; I have just eaten mine;" we had dinner just ready; "I have just eaten mine."

Q Had you prepared dinner with the expectation he would be there for dinner?

A No, I had not. I had my own dinner but I had enough; there was plenty in the ice-box that I could have fixed it in a minute for him.

Q Now, Mrs. Hogstrom, you have visited Santa Cruz Island?

A Yes.

Q And visited the Englund's there?

A Many times, several times, and I have lived there.

Q You have lived there?

A Yes, I have lived on the Island.

Q At times you would go over there. What was the custom with regard to taking provisions and so forth?

A We have always taken provisions when we went there, always, for ourselves and for their benefit. We did

(Testimony of Mrs. Belle Hogstrom)

not feel like imposing on them; they were poor people like we were and we took enough to help them over, as well as ourselves, every time we went.

Q That is your custom and it is really the custom of people visiting the Island?

A When I lived there it was customary for fishermen to bring groceries and fresh water for me.

Q There was no communication with the main land?

A None at all, not outside of the fishing season there wasn't.

Q Any telephone or any cable?

A Nothing like that.

MR. YAKEY: That is all.

### CROSS EXAMINATION

BY MR. CHICHESTER:

When your husband and Mr. McFarland and Mr. Fletcher first came to your house on March 1st, who was the first one to talk to you?

A They all came to the door together; I don't know who spoke first.

Q Who was the first one to talk?

A I don't remember which one talked first.

Q It is a fact that your husband spoke to you first?

A. I can't remember whether he talked first or whether Mr. McFarland spoke first.

Q Didn't he ask for the letter shortly after he got into the house?

A Yes, sir, shortly after he got into the house.

Q And you didn't know what letter he referred to at first?

(Testimony of Mrs. Belle Hogstrom)

A He said, "Have you got that letter from Ray?", and I said, "Which one?". I had many letters from Ray.

Q That was just a recent letter. Why did you have your husband's dinner ready for him?

A When he is on a fishing boat I don't know when he is coming.

Q How do you know when he was on a fishing boat?

A That is his occupation.

Q Did you know where he went that morning?

A I could imagine where he went but I didn't know exactly.

Q Did you have an idea he was going to be gone two weeks?

A He often is gone two weeks.

Q I mean at that time?

A Yes, I imagine he did.

Q Did he mention it to you?

A We had mentioned it beforehand, about him going to the Island.

Q What was his purpose in going to the Island?

A Visiting.

Q But he was not going to take you?

A No. I get too sea-sick. If I go to Santa Barbara I want to go with a fisherman that is going in two or three hours. I get deathly sea-sick.

Q But you were not going at all on this trip?

A No, not on this trip.

Q And your husband was taking a vacation?

A I think he was.

Q And he had not been working before that?

A He worked for the moving picture people.

(Testimony of Mrs. Belle Hogstrom)

Q That was the only time he had been working?

A In how long a time?

Q During the past year how long had he been working?

A I cannot set the time.

Q How much did he earn during the past year, during the last year up until March 3, 1932?

A I would have to look that up. I cannot tell you how much he earned; not enough to pay income tax.

Q Without any reflection upon wealth, you stated you were poor people like the people on the Island?

A Yes.

Q And he was buying \$69 worth of food to take out to the Island?

A I did not say he was buying \$69 worth.

Q Where was he to get the money to make these purchases?

A He said he did not pay for them.

Q He was able to take a vacation for two weeks?

A It was rather an enforced vacation; there was no work at that time.

Q Do you know Mr. Johnston?

A I know several people by the name of Johnston.

Q Do you know Mr. Johnston who was on the boat with your husband on this particular occasion?

A Slightly.

Q Do you know where he is now?

A No.

Q When did you see him last?

A I don't remember when, whether it was soon after that or later; I do not remember; I do not see him much.

(Testimony of Mrs. Belle Hogstrom)

Q You know him as a notorious rum-runner?

A I do not.

Q I show you a picture and ask you if that is Mr. Johnston? (Handing photograph to witness.)

A Well, that is the name I knew him under.

Q He looked like the same man?

A Yes, sir.

Q You did not know that he was going on this trip to the Island with your husband?

A No, I didn't.

Q You have lived on the Island, have you?

A Yes, sir.

Q How long?

A I lived 6 months on Santa Cruz Island and 10 months on Anacapa Island, where we have no water at all, only the water brought in by the fishing boats.

Q Were you married at that time to Mr. Hogstrom?

A Yes, sir.

Q Was he living there?

A Yes.

Q Did he ever do any hunting on Santa Cruz Island?

A Yes, sir.

Q How did he hunt?

A With a gun.

MR. CHICHESTER: That is all.

MR. YAKEY: That is all.

(Witness excused.)

(Testimony of Mrs. Ray Englund)

MRS. RAY ENGLUND,

a witness called and sworn on behalf of the Claimants,  
testified as follows:

DIRECT EXAMINATION

BY MR. YAKKEY:

Q You live on Santa Cruz Island, Mrs. Englund?

A Yes, sir.

Q And you live there with your husband and family?

A Yes, sir.

Q Are you acquainted with Captain Hogstrom and Mrs. Hogstrom, who have been on the witness stand here?

A Yes, sir.

Q How long have you known them?

A Oh, many, many years.

Q Were you in frequent correspondence with them?

A Yes, sir.

Q And on friendly terms?

A Yes, sir.

Q Were they in the habit of making you frequent visits on the Island?

A Well, they had not been over there for a couple of years, but whenever they had a chance and there was nothing to do they made a trip. They would come over and spend, sometimes they would spend 3 or 4 days, sometimes a week, sometimes 2 weeks.

Q During these visits what was their custom with regard to furnishing provisions?

A They always brought provisions with them, always.

(Testimony of Mrs. Ray Englund)

Q Do you have other friends who come to the Island and visit you?

A Yes.

Q What is the custom with regard to them?

A It is the same; all our friends bring their provisions. They do not feel like coming over there and eating off of us. They bring their provisions and I cook for them, all together.

Q Then, any provisions left from the trip, what becomes of them?

A They leave them with me.

Q In case there are more provisions than you can use, what do you do?

A Beg pardon?

Q For instance, if there are more eggs or meats or things of that kind, while your company is there, what do you do with them?

A If it is beef I can pickle it down and make corned beef of it, and in these camps a little on both sides of us, we can divide it. If it is eggs—I have chickens but I do not have very many eggs. They lay in the brush and cactus. The eggs, they can be put down in water glass, which is a liquid to preserve eggs in.

Q What is Mr. Englund's business?

A Fishing.

Q And he is equipped with fishing tackle and nets and so forth?

A No nets. He does not fish with nets; he fishes with lines. In the summer—he does not do a great deal of fishing in the summer, but what he does he does with lines. But in the last few years there has not been much



(Testimony of Mrs. Ray Englund)

fishing in the summer except for our own use. In the winter he fishes for crawfish or lobster. We call them crawfish.

Q Only for lobster?

A Yes.

Q And during the fishing season you have company as in any other season?

A Surely.

Q Your company comes there during the fishing season as well as other seasons?

A Yes, sir.

Q And it is the custom for them to bring provisions with them for you and in return they use the fishing tackle and fishing supplies of Mr. Englund?

A Yes, sir, and our camp; they make themselves right at home. I cook for them and they live there while they are there.

Q How do you get your provisions on the Island?

A In the winter time we have a boat that comes after our fish and they bring our stuff to us. In the summer time we have no way. We have to just depend on some boat or someone we know that comes in there. Sometimes they will take me over to Santa Barbara and if they are coming back in a week or so I will send a list in, but we never know when we are going to have a chance.

Q Is any charge made by any of these people for doing that for you?

A No, sir.

Q And it is the custom of the Island that anyone that is going to the mainland at Santa Barbara or Los

(Testimony of Mrs. Ray Englund)

Angeles, that anyone that wants provisions, they get them and bring them to them without any charge so far as transportation is concerned?

A Yes, sir.

Q Now then, with regard to water, is there any fresh water on the Island?

A Yes, sir, there is lots of fresh water. We have a well at our place but you cannot wash your hair in it. If you do, your hair comes loose and falls out. You cannot cook no beans or peas or anything like that in it.

Q How do you get the fresh water, then?

A In the winter-time when our tender is running it brings the fresh water every week.

Q About how much do you get of fresh water?

A I have five gallon cans and five gallon bottles and I send in two or three a week, say, two a week, with the tender, and then next week he brings them back and I give him two more and so on, all the season, but in the summer time if any fishing boat comes in and we are short of water we go out and ask them for ten or fifteen gallons, whatever they can spare.

Q And they always let you have it?

A Yes, sir, if they have it.

MR. YAKKEY: Cross examine.

### CROSS EXAMINATION

BY MR. CHICHESTER:

Q You have your own chickens?

A Yes I have.

Q About how many?

A 12 hens and a rooster.

(Testimony of Mrs. Ray Englund)

Q If Mr. Hogstrom brought out 36 dozen eggs, that would be quite a number of eggs for you to eat with Mr. Johnston and Mr. Hogstrom.

A Well, there are three of us over there and I believe there were two on the boat; that is five. I cook four eggs every morning for my husband, if I have them.

Q Nevertheless, 36 dozen would last quite a while?

A I bake; I do lots of baking.

Q It is in excess of 400 eggs. You would not have an opportunity to use them up in a very short time before they would spoil.

A 400?

Q Yes.

A It was a case of eggs, wasn't it?

Q Yes.

A That is 30 dozen.

Q 36 dozen were found in the boat at the time of the seizure.

A I believe I could use them up. If not, I could give them to either the camp below us or the camp above us. The camp below us has no chickens.

Q You stated there is plenty of fresh water on the Island, isn't that correct?

A Yes, sir.

Q Do you have any kind of garden out there?

A Yes, sir.

Q Do you raise any beans or peas in the garden?

A I raise beans.

(Testimony of Mrs. Ray Englund)

Q That would be the only need of this water, to put beans and peas and to wash your hair? You would not need it for drinking purposes?

A We drink it, too. That water on the island is so full of alkali—you can drink it but you cannot wash your hair in it; you cannot cook beans or peas in it and you cannot wash your hair with it.

Q How long before had Mr. Hogstrom been over there to visit you?

A It was around two years.

Q You did not know he was coming on this occasion?

A No, sir.

Q You did not ask him to bring over any food-stuff or any materials?

A No, sir.

MR. CHICHESTER: That is all.

THE COURT: That is all, madam.

MR. YAKEY: That is the respondents' case, your Honor.

MR. CHICHESTER: We would like to call one witness in rebuttal.

THE COURT: For what purpose?

MR. CHICHESTER: To establish whether or not this boat was headed for *San Cemente* Island or whether it was headed for Santa Cruz. We had a witness in court who made the first notations—

THE COURT: It appears to us that there is sufficient in the case to indicate that. One of the Government officers has stated the direction. The man on the boat hasn't any real idea or recollection of what direction the boat was headed at the time of its seizure. If there

is no other purpose in calling a rebuttal witness, the Court believes that the evidence should be concluded and I would like to hear from the respondents.

MR. YAKY: You mean an argument, your Honor?

THE COURT: If you have any argument to make.

MR. YAKY: I have prepared hardly what you would call a complete brief, because I did not have time to do that, but our contention, as set forth in that, your Honor, is that there was not a violation of Section 4377.

THE COURT: Do you wish to present an argument?

MR. YAKY: Yes, your Honor.

THE COURT: Very well. Proceed.

(Argument by Mr. Yakey.)

THE COURT: The argument presented here on behalf of respondents is founded upon certain premises. There might be considerable plausibility to the contention of the respondents if the Court could agree with the premises. As we listened to the testimony of these witnesses it occurred to us that outside of some such tale as those written by Robert Louis Stevenson, one would hardly be expected to find such an explanation as was offered here by the man operating this boat. His story is fantastic and does not ring true, a man who has been out of employment for many months, except occasional employment, who has a boat that he states he has rented under an arrangement to pay \$300 monthly rental therefor, and has paid no rent thereon for months, and then proceeds to place provisions on board the boat far beyond his own needs and during a period of time when the alleged persons on the Island for whom they were supposed to be intended were in a position to ob-

tain supplies at least weekly, whose boat when seized is headed not in the direction of the supposed destination but headed on a course quite considerably different, and whose explanation of certain peculiar contrivances on his boat, presumed to be provided for a purpose that was not admittedly the principal purpose in building the boat, a boat which is equipped to operate at a speed admittedly much faster than any fishing boat in these waters—it strikes us that the admitted circumstances, if there were nothing else in the case, stamp the story related here by the man operating the boat as one wholly unworthy of credence. It is our view that this man was taking these provisions not to the island but that he was headed for a destination in connection with a commercial transaction; that instead of just starting out on a vacation, he was engaged in a pursuit for the making of money, and that he proposed to deliver these provisions at a price; that the boat was never authorized to be employed in any such purpose.

We shall hold that there was a violation as charged and direct the decree accordingly. Government counsel will prepare findings and a decree is granted and an exception will be allowed.

Do you care to stipulate as to the time within which a bill of exceptions may be filed?

MR. CHICHESTER: How much time does counsel desire.

MR. YAKEY: If my physical condition were better I would not want more than ten days.

THE COURT: You mean ten days after the filing of the decree?

MR. YAKEY: Yes, your Honor.

THE COURT: Very well.

[Endorsed]: Filed Jul 21, 1932. R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

NOTICE OF APPEAL

To: The United States of America, Libelant; and S. W. McNabb, United State Attorney, I. F. Parker, Assistant United States Attorney, and Frank M. Chicester, Assistant United States Attorney, its proctors

You and each of you WILL PLEASE TAKE NOTICE that the respondent and claimant, F. E. Kirk, of the "AMERICAN GAS SCREW V-293", her motors, tackle, apparel, furniture etc., by his proctor, H. Wm. Hess, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered on the 10th day of May, 1932, and the amended and final decree made and entered on the 28th day of May, 1932, and the whole thereof.

DATED: Los Angeles, California, June 8, 1932.

H. Wm. Hess

H. WM. HESS

Proctor for Claimant and Respondent

[Endorsed]: Filed Jun 8 1932 R. S. Zimmerman,  
Clerk By Edmund L. Smith, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS

NOW COMES THE APPELLANTS, the American Gas Screw V-293 and Fallon E. Kirk only by H. Wm. Hess, their proctor, and in connection with their petition for appeal say that, in the record, proceedings and in the final decree aforesaid, manifest error has intervened to the appellants, to-wit:

I

The District Court erred in finding and holding that all of the allegations of the libel are true.

## II

The District Court erred in finding and holding that all the denials set forth in the answer of the owner of the respondent vessel herein are untrue.

## III

The District Court erred in finding and holding that the allegations of paragraphs I and II of the affirmative defense in respondent charterer's answer is untrue.

## IV

The District Court erred in finding and holding that the allegations of paragraph I of the respondent owner of said vessel was untrue.

## V

The District Court erred in finding and holding in paragraph III and IV of the findings of fact that the respondent vessel was engaged in trade other than that for which she was documented and *and* such finding of alleged fact is manifestly erroneous, obviously unsupported by the evidence and is the direct result of inference, conjecture and speculation resultant from the admission of incompetent prejudicial and inadmissible evidence.

## VI

That the District Court erred in holding and finding in paragraph III of the findings of fact that respondent vessel was documented SOLELY for fishing and for that the Government's Exhibit No. 9 which is a copy of the application clearly and definitely recites that the PRINCIPAL occupation will be fishing.

## VII

That the District Court erred in finding and holding that the said respondent vessel together with her motors, tackle, apparel and furniture was engaged in a trade other



than that for which she was licensed or documented in violation of Section 4377—R. S. 46—U. S. C. A.—325 and that such conclusion No. 1 is against the law, and is wholly unsupported by the evidence and is clearly presumptive and arrived at from prejudicial inference.

## VIII

That the District Court erred in finding and holding that the owner of the respondent vessel knew at the time of documentation or AT ANY OTHER TIME, that the respondent vessel was to be used for purpose other than that for which she was documented.

## IX

That the District Court erred in admitting for identification Government's Exhibit No. 1 and for that the same is not a public record and no foundation was even laid for its admission and that in reality and fact it is a confidential generalized circular to employees of a Government bureau, interposed in the instant matter for the sole and only purpose of prejudicing the rights and property of the respondent herein.

## X

That the District Court erred in admitting to evidence any of the direct testimony of the Government witness Allen Loyal Lundberg and for that the entire chain of testimony neither serves to prove or disprove any material allegation contained in the libelant's Libel of Information but on the contrary goes in its entirety to a date, place and occurrence not germane to the issues herein and was inserted for prejudicial reasons only.

## XI

That the District Court erred in admitting to evidence, that part of the direct testimony of Government witness

Lieut. John Hay Fletcher and for that the witness was permitted to testify as to conversations without the presence of respondents and is not binding upon the respondents herein as such evidence is clearly hearsay and contrary to the law.

## XII

That the District Court erred in admitting to evidence that part of the testimony of the Government witness Lieut. John Hay Fletcher and for that the witness was permitted over the objection of respondent's proctor to interpose an opinion and conclusion without qualification as concerned the mental and physical action and reaction of one of the respondent's witnesses.

## XIII

That the District Court erred in admitting any or all of the testimony of the Government witness, Thomas Noland and for that all the evidence is incompetent and speculative and purports to connect the respondent vessel and owner with an act and deed occurring in foreign waters on a prior date, far remote from the situs of the case at bar.

## XIV

That the District Court erred in not admonishing and cautioning the proctor for the libelant and for that the libelant's proctor throughout the entire presentation of this matter consistently and with design interposed inadmissible statements and inflammatory questions and observations of such a biased, prejudicial nature as to preclude respondents from their constitutional prerogative, namely, the right to a fair trial.

## XV

That the District Court erred in not dismissing the Libel with Costs.

## XVI

That the District Court erred in holding and finding that the Respondent vessel had deviated from its plotted course and for that the Respondent vessel was still within the confines of the zone of navigation of the harbor and due care and caution was and is required within such zone to avoid incoming vessels, debris, flotsam and jetsam of the waterfront, buoys and ground swells of the sea.

## XVII

The District Court erred in finding and holding that the respondent vessel was on or had any plotted course at the time of seizure and for that the respondent vessel was so closely contiguous and adjacent to the harbor and shore as to place such decision into the realm of speculation and theory and contrary to the law.

## XVIII

That the District Court erred in holding and finding that the Respondents or any of them, received or were to receive any consideration, emolument or monetary reward for the goods, wares and merchandise aboard the Respondent vessel and for that the uncontradicted affirmative evidence and all of it definitely establishes the contrary.

## XIX

That the District Court erred in holding and finding that the Respondent vessel was engaged or about to engage in an illegal venture and for that the evidence does not disclose any conspiracy of any kind, does not disclose any contact with any vessel at any time, for

legal purposes or otherwise; does not disclose any intention of contacting other vessels; does not disclose the ability of the Respondent vessel to withstand the perils and rigors of the high seas.

## XX

The District Court erred in holding and finding that the Respondent vessel came within the purview of the statute by virtue of which authority the libelant acquired the property of the respondent herein, contrary to law.

## XXI

The District Court erred in holding and finding that the Respondent herein forfeited his property, the Respondent vessel, to the Libelant, and for that, such holding and finding is directly contrary and opposed to both the letter and the spirit of Section One, Article Fourteen of the Constitution of the United States of America.

## XXII

The District Court erred in entering a Decree in favor of Libelant and against the respondent and predicating such Decree upon the lack of cohesion of the evidence of the Respondent's defense rather than the preponderance of proof of the libelant.

## XXIII

That the District Court erred in finding that a Decree be entered in this cause declaring the respondent vessel forfeited to the United States, with all costs to be assessed against claimant, the same being contrary to the law, and based upon suspicion only.

WHEREFORE, appellants pray that the Decree of the District Court of the United States for the Southern District of California be reversed and remanded with directions to proceed in accordance with the law.

H. Wm. Hess

H. WM. HESS

Proctor for Appellants

[Endorsed]: Filed Jul 26 1932 R. S. Zimmerman,  
Clerk By C. A. Simmons Deputy Clerk

[TITLE OF COURT AND CAUSE.]

STIPULATION RE-RECORD AND PRINTING OF  
RECORD OF APPEAL

IT IS HEREBY STIPULATED by and between the UNITED STATES OF AMERICA, Libelant, and FALLON. E. KIRK, Claimant and Respondent that the Libelant's Exhibit Numbers 1 to 9 inclusive and Respondent's Exhibit Numbered A to C inclusive, in the above-entitled action may be certified and transmitted by the Clerk of the United States District Court to the United States Circuit Court at San Francisco and may be used for all purposes on Appeal with the same force and effect as though they had been incorporated in the transcript of the record,

IT IS FURTHER STIPULATED THAT in the preparation of the Record on Appeal, that in all headings and documents and pleadings, in lieu of the full title of the COURT and CAUSE, the words "Title of Court and Cause" may be used, and the name of the document, and that all backs of all papers may be omitted except the Clerk's filing stamp, and omit all verifications, substituting therefor the word, "verified".

Samuel W. McNabb

SAMUEL W. McNABB

United States Attorney.

Frank M. Chichester

Assistant United States Atty.

H. Wm. Hess

Proctor for Respondent & Claimant

[Endorsed]: Filed Jul 26 1932 R. S. Zimmerman,  
Clerk By C. A. Simmons, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

## SUBSTITUTION OF ATTORNEYS

We hereby nominate, substitute and appoint Wm. H. Hess, Esq. as our attorney in the above entitled cause in the place and stead of John B. Yakey.

F. E. Kirk

I hereby accept the above substitution

H. Wm. Hess

I hereby consent to the above substitution.

John B. Yakey

DATED: this 16th day of May, 1932

[Endorsed]: Filed June 7-1932 R. S. Zimmerman,  
Clerk by C. A. Simmons, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

## NOTICE OF ASSOCIATION OF PROCTOR

NOTICE IS HEREBY GIVEN: THAT Stanley M. Doyle, Esq., of Glendive, Dawson County, Montana, is retained as Associate Proctor for the Appellant and Respondent, Fallon E Kirk, in the above-entitled matter.

H. WM. HESS

H. Wm. Hess

Proctor for Respondent.

[Endorsed]: Filed Oct 12 1932 R. S. Zimmerman,  
Clerk By Theodore Hocke, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

IN ADMIRALTY BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, F. E. Kirk, as Principal, and the LEXINGTON SURETY AND INDEMNITY COMPANY, a corporation duly organized under the laws of the State of New York and qualified for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the United States of America, as surety, are held and firmly bound unto the United States of America in the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00) covering costs and in the sum of ONE THOUSAND DOLLARS (\$1000.00) covering stay of execution, lawful money of the United States of America to which payment well and truly to be made we bind ourselves and our heirs, executors and administrators and successors, jointly and severally, firmly by these presents.

WHEREAS, the said F. E. Kirk, claimant in the above entitled suit is about to take an appeal to the United States Circuit Court of the Ninth District to reverse an order or decree made, rendered and entered on the 31st day of May, 1932 by the District Court of the United States for the Southern District of California, Central Division, granting judgment against the claimant which decree orders THE AMERICAN GAS SCREW V-293 to be forfeited to the United States of America, and

WHEREAS, the said Claimant, F. E. Kirk, is desirous of staying the execution of said judgment so appealed from and it is further ordered by the said Court that

upon said F. E. Kirk filing a bond in the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00) covering costs and ONE THOUSAND DOLLARS (\$1000.00) covering stay of execution with sufficient sureties and conditions as required by law, the same shall operate as a supersedeas of the said judgment and decree and shall suspend and stay all further proceedings of the said Court until the termination of the said appeal.

NOW, therefore, the conditions of the above obligation are such that if said Claimant, F. E. Kirk, shall prosecute said appeal to effect and answer all damages and costs if Claimant, F. E. Kirk, fail to make good his plea, then the above obligation to be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, said Principal and Surety have caused these presents to be duly signed and sealed at Los Angeles, California this 17th day of June, 1932.

F. E. Kirk

Examined and recommended for approval as provided in Rule 28.

H. Wm. Hess, Proctor.

LEXINGTON SURETY AND INDEMNITY COMPANY

[Seal] By Tom Cline, Attorney-in-Fact

STATE OF CALIFORNIA )  
County of Los Angeles ) ss.

On this day of Jun 17 1932 in the year one thousand nine hundred and ..... before me, AUGUST M. NARDONI, a Notary Public in and for the County of LOS ANGELES, personally appeared TOM CLINE



known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the LEXINGTON SURETY AND INDEMNITY Company, and acknowledged to me that he subscribed the name of the Lexington Surety and Indemnity Company thereto as principal, and his own name as Attorney-in-fact.

(Seal)

August M. Nardoni

Notary Public in and for the County  
of Los Angeles, State of California.

My Commission Expires Aug. 31, 1935

APPROVED this 17 day of June, 1932.

Hollzer

Judge

[Endorsed]: Filed Jun 17 1932 R. S. Zimmerman,  
Clerk By C. A. Simmons, Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

PRAECIPE FOR RECORD ON APPEAL

TO: THE CLERK OF SAID COURT

Please prepare the record and apostles on Appeal to be filed in this cause in the office of the Clerk of United States Circuit Court of Appeals for the Ninth Circuit and include therein the following:

(A) All those papers, documents and data required by Subdivision (1) Section (1) of Rule (4) of the Rules and Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

(B) All of the pleadings, together with the Exhibits annexed thereto in the above cause, all opinions of the Court on questions arising in said cause, findings of fact and conclusions of law in Interlocutory and Final Decrees, and other documents designated herein, said papers being as follows:

1. The Libel with Exhibits annexed thereto.
2. The pleadings of the Respondents or Claimants with the Exhibits annexed thereto.
3. Claims of Fallon E. Kirk and Eric Hogstrom.
4. The testimony as taken on the part of Libellant herein.
5. The testimony as taken on the part of Respondents or Claimants herein.
6. Substitution of Proctors.
7. The findings of fact and conclusions of law.
8. Petition for Appeal and assignment of errors.
9. Stipulation Re-Printing of Record on Appeal.
10. This Praecipe.
11. Original of Subpoena Duces Tecum and returns thereof.
12. Copies of all bonds, bail and otherwise filed herein.
13. Final Decree.

H. Wm. Hess  
H. Wm. HESS  
Proctor for Appellant.

[Endorsed]: Filed Jul 26, 1932 R. S. Zimmerman,  
Clerk By C. A. Simmons, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

## CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 154 pages, numbered from 1 to 154 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the libel; monition and return thereto; stipulations for costs; intervenor's petition and answer to libel; claim of F. L. Kirk; claim of Eric Hogstrom; subpoena *Duces Tecum* and return thereon; findings of fact and conclusions of law; final decree; reporter's transcript of testimony and proceedings on trial; notice of appeal; assignment of errors; stipulation *re* record and printing of record on appeal; substitution of attorneys; notice of association of proctor; bond on appeal and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$            and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of October, in the year of Our Lord One Thousand Nine Hundred and Thirty-two, and of our Independence the One Hundred and Fifty-seventh.

R. S. ZIMMERMAN,  
Clerk of the District Court of the  
United States of America, in  
and for the Southern District of  
California.

By

Deputy.